

# Elder Abuse



The Attorney General's  
2014 Law Enforcement Summit  
October 7, 2014

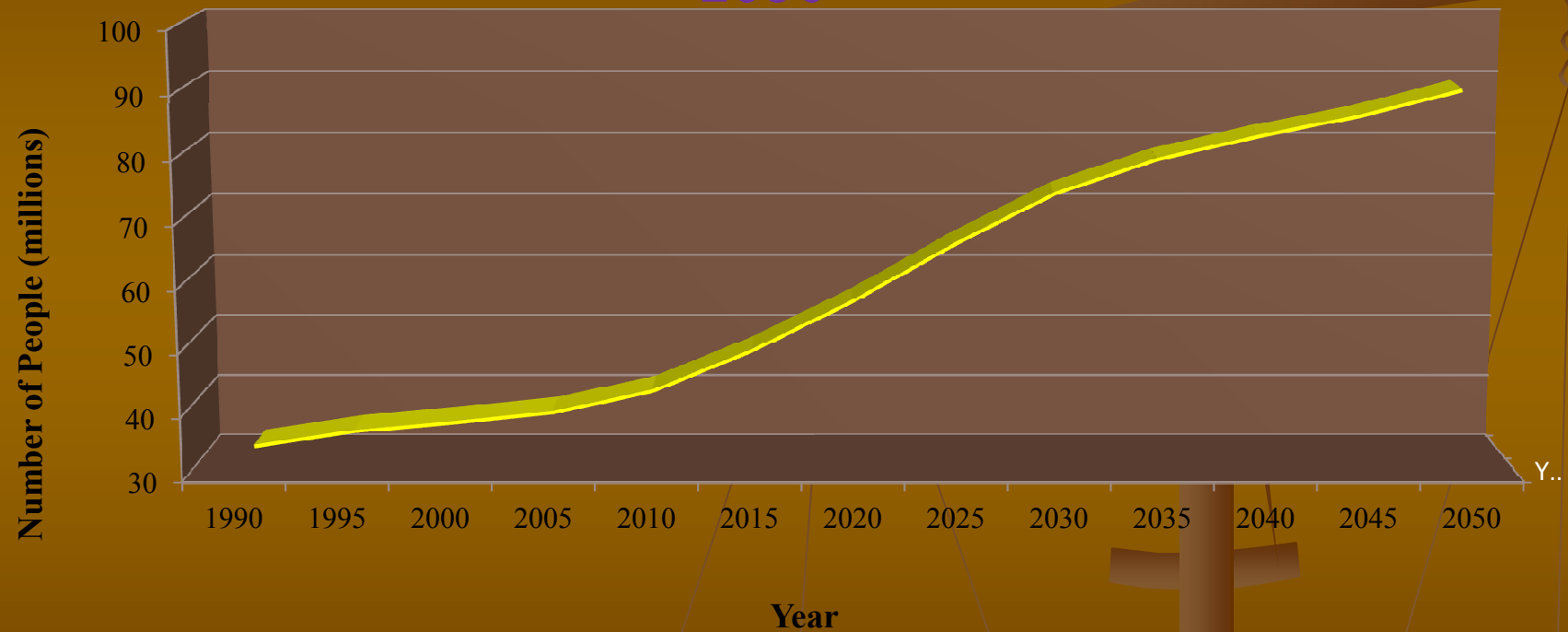
J. Seth Gowan, District Attorney's Office,  
15<sup>th</sup> Judicial Circuit

John C. Craft, Professor, Jones School of Law

# Virginia “Ginger” Freck



## U.S. POPULATION AGE 65 AND OLDER IS ON THE RISE 1990-2050



Source:  
U.S. Census Bureau population estimates.

# 65 and Over in Alabama

- Alabama's population in 2010: Just under 4.8 million. 14.9% of population is 65 and over (712,000)
- Montgomery: Out of 229,363, 12.9% of population is 65 and over (29,588)

(U.S. Census Bureau)



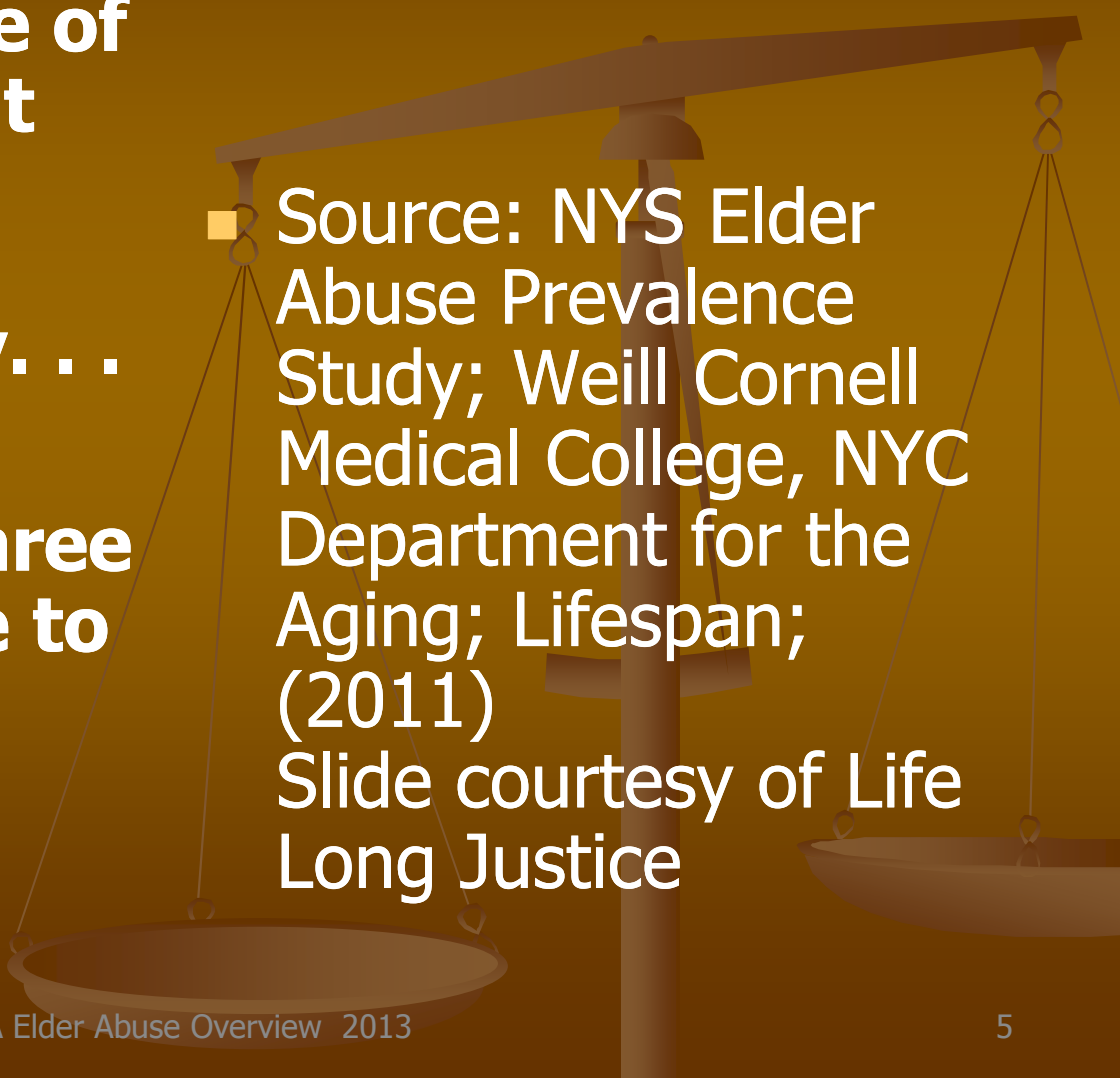
# Elder Abuse: Under the Radar

**For every one case of  
elder abuse that  
comes to the  
attention of a  
responsible entity. . .**

**1**

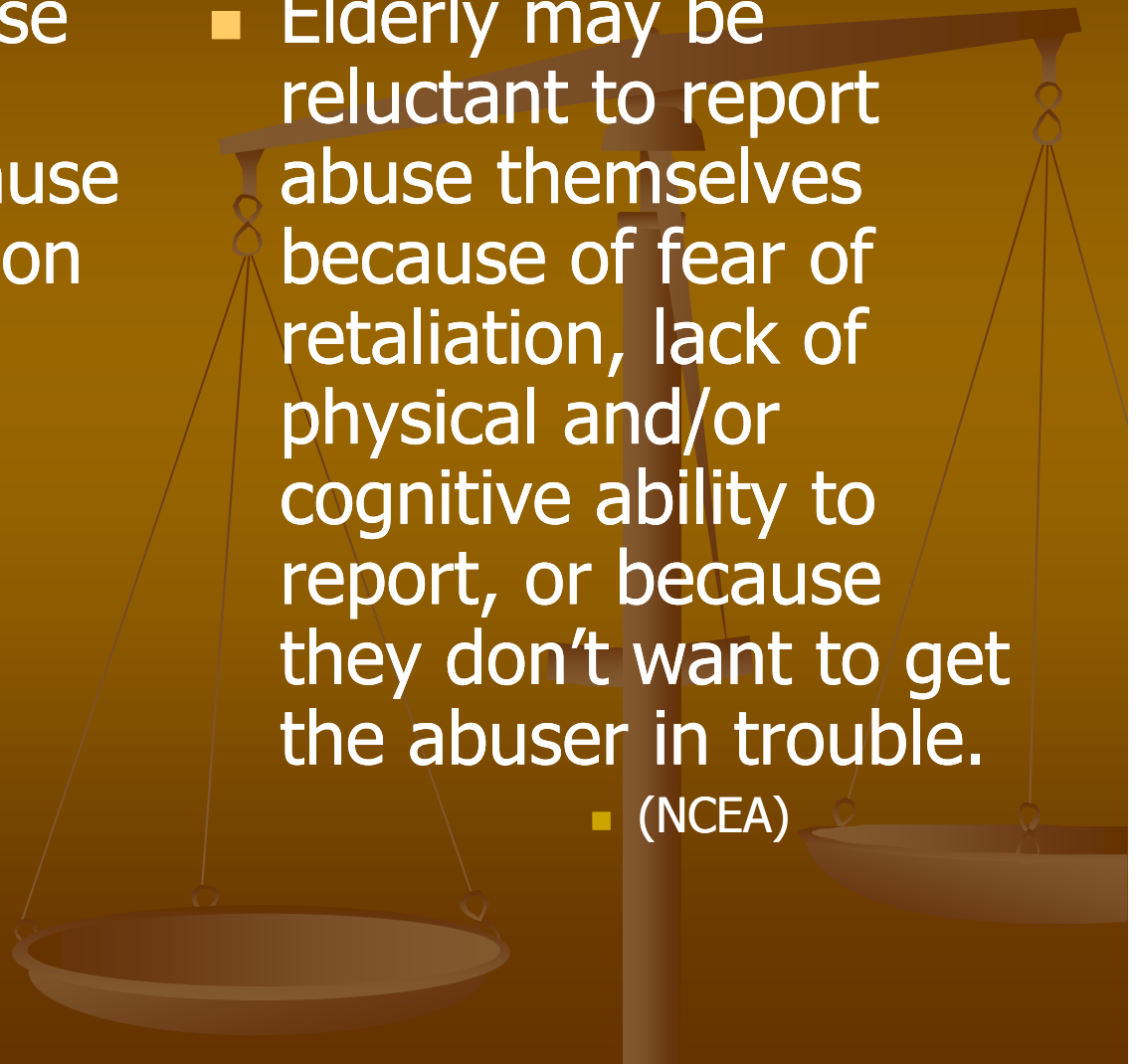
**Another twenty three  
cases never come to  
light.**

**23**

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- Source: NYS Elder Abuse Prevalence Study; Weill Cornell Medical College, NYC Department for the Aging; Lifespan; (2011)  
Slide courtesy of Life Long Justice

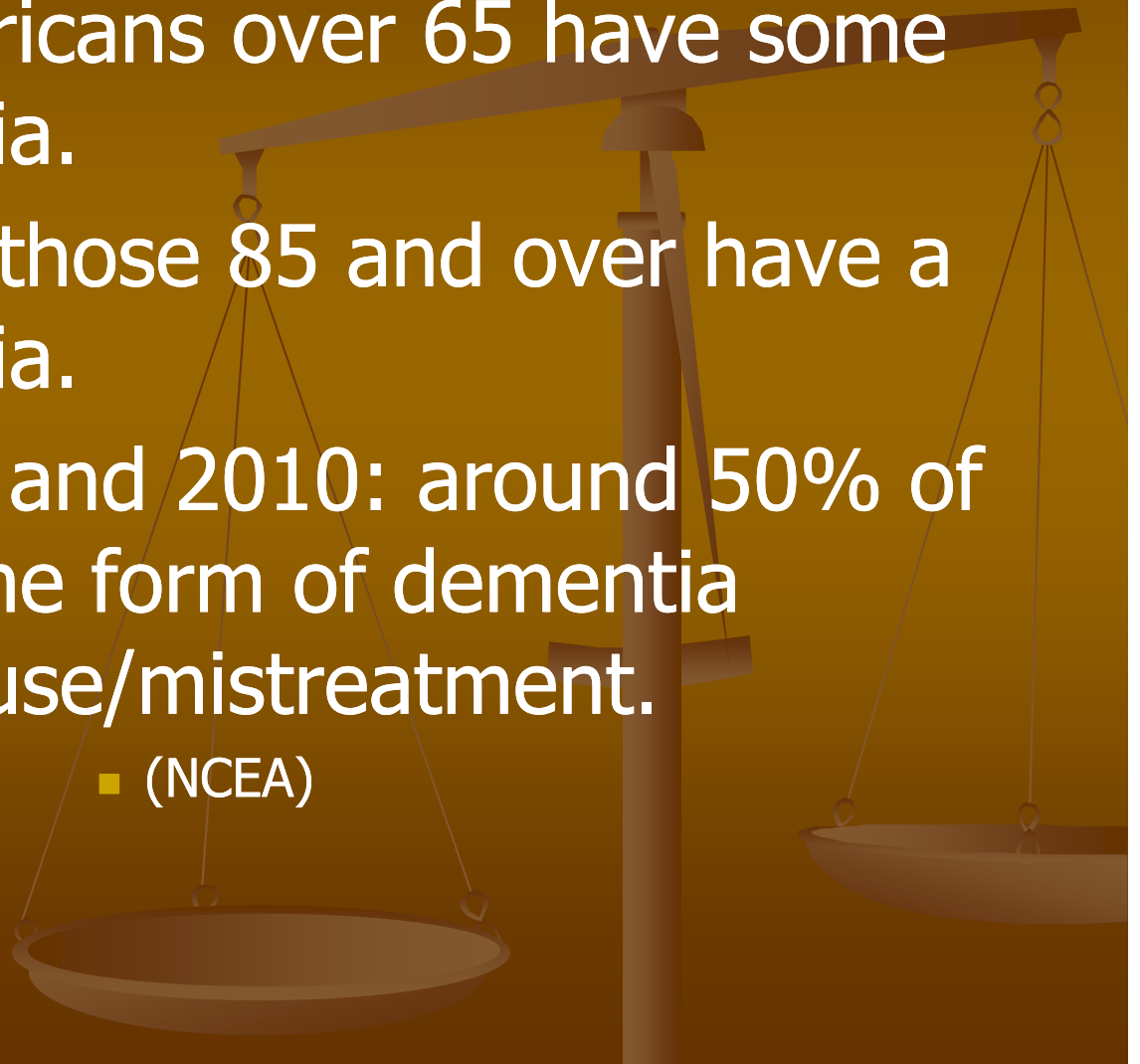
# How and Why do we miss?

- Signs of elder abuse may be missed by professionals because of lack of training on detecting abuse.
- Elderly may be reluctant to report abuse themselves because of fear of retaliation, lack of physical and/or cognitive ability to report, or because they don't want to get the abuser in trouble.
  - (NCEA)



# Dementia and Elder Abuse

- 5.1 million Americans over 65 have some form of dementia.
- Close to half of those 85 and over have a form of dementia.
- Studies in 2009 and 2010: around 50% of elderly with some form of dementia experienced abuse/mistreatment.
  - (NCEA)



# Impact of Elder Abuse

- The impact of abuse, neglect, and exploitation also has a profound fiscal cost. The direct medical costs associated with violent injuries to older adults are estimated to add over \$5.3 billion to the nation's annual health expenditures, and the annual financial loss by victims of elder financial exploitation were estimated to be \$2.9 billion in 2009, a 12% increase from 2008. (NCEA)

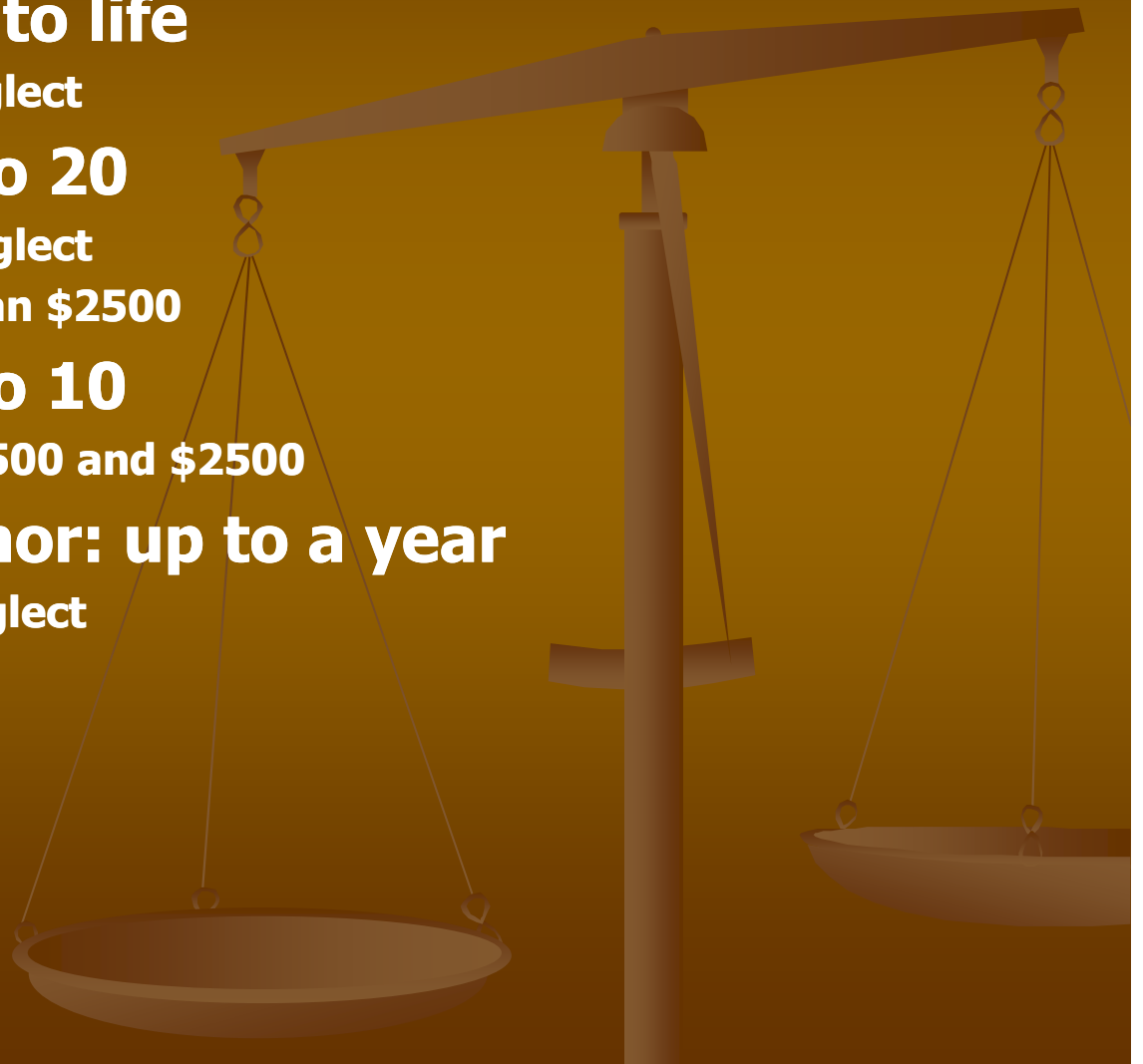
# Legislative & Advocacy

- Protecting Alabama's Elders Act
  - Effective August 1, 2013.
  - Creates additional criminal penalties for elder abuse, neglect, and financial exploitation.
  - Does not change current APS statute.
  - Applies to victims 60 years of age or older.
  - Strengthens penalties.

# Protecting Alabama's Elders Act

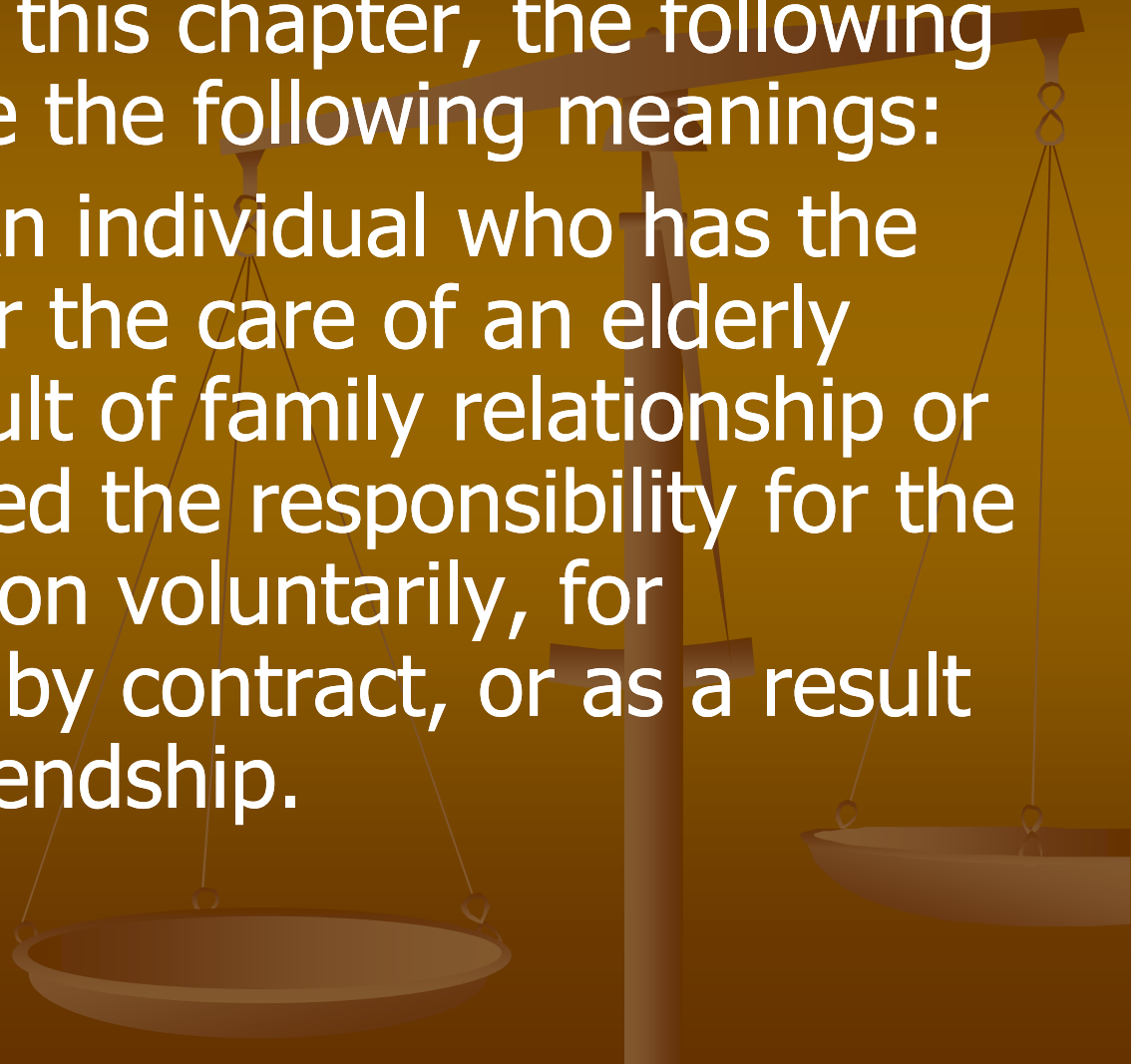
## §§ 13A-6-190 through 13A-6-201

- **Class A Felony: 10 to life**
  - 1<sup>st</sup> Degree Abuse or Neglect
- **Class B Felony: 2 to 20**
  - 2<sup>nd</sup> Degree Abuse or Neglect
  - Exploitation of more than \$2500
- **Class C Felony: 1 to 10**
  - Exploitation between \$500 and \$2500
- **Class A Misdemeanor: up to a year**
  - 3<sup>rd</sup> Degree Abuse or Neglect
  - Exploitation up to \$500



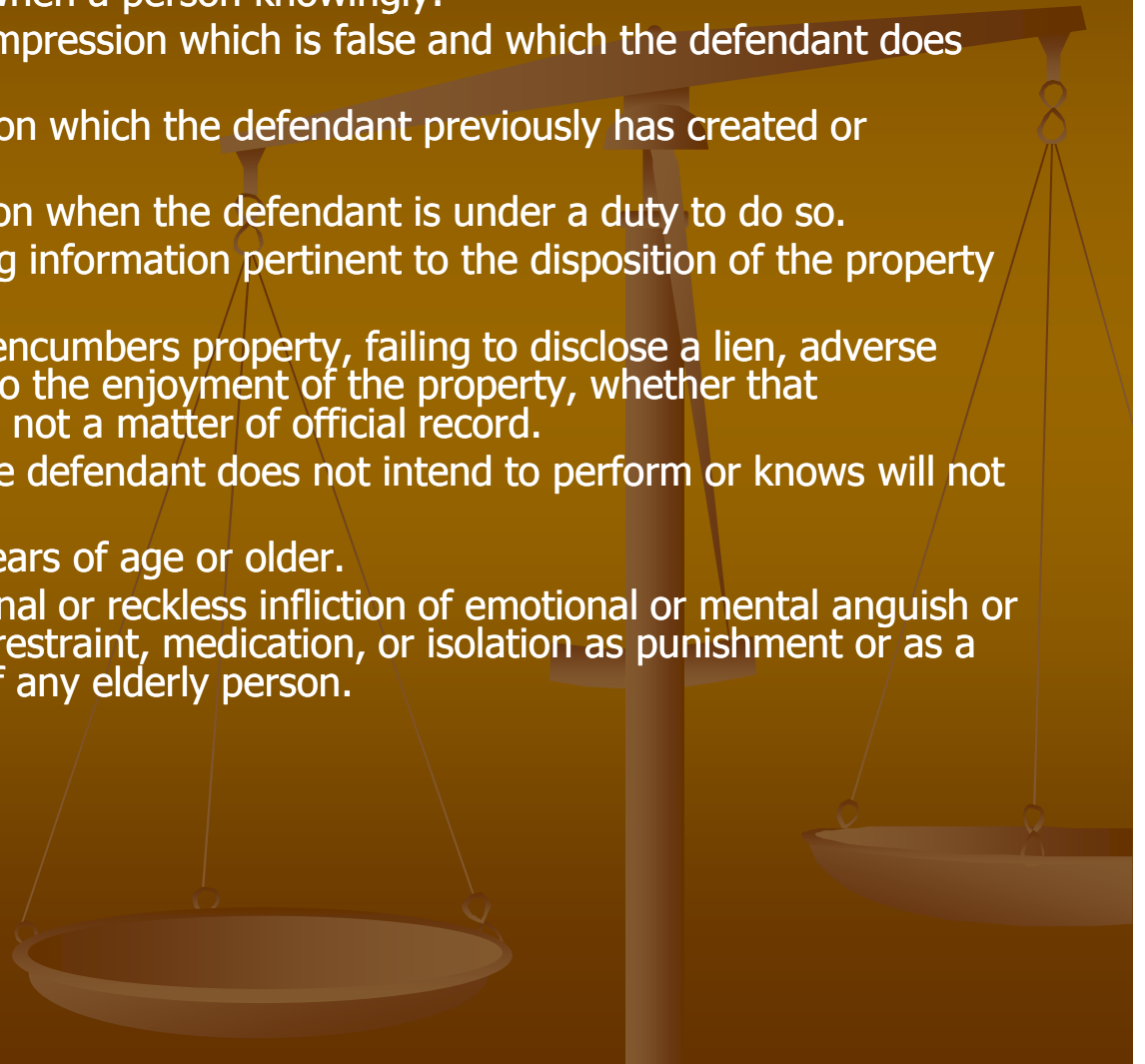
# §13A-6-191 Definitions

- For purposes of this chapter, the following terms shall have the following meanings:
- (1) Caregiver. An individual who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, for pecuniary gain, by contract, or as a result of the ties of friendship.



# Definitions cont.

- (2) Deception. Deception occurs when a person knowingly:
  - a. Creates or confirms another's impression which is false and which the defendant does not believe to be true.
  - b. Fails to correct a false impression which the defendant previously has created or confirmed.
  - c. Fails to correct a false impression when the defendant is under a duty to do so.
  - d. Prevents another from acquiring information pertinent to the disposition of the property involved.
  - e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is not a matter of official record.
  - f. Promises performance which the defendant does not intend to perform or knows will not be performed.
- (3) Elderly person. A person 60 years of age or older.
- (4) Emotional abuse. The intentional or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication, or isolation as punishment or as a substitute for treatment or care of any elderly person.

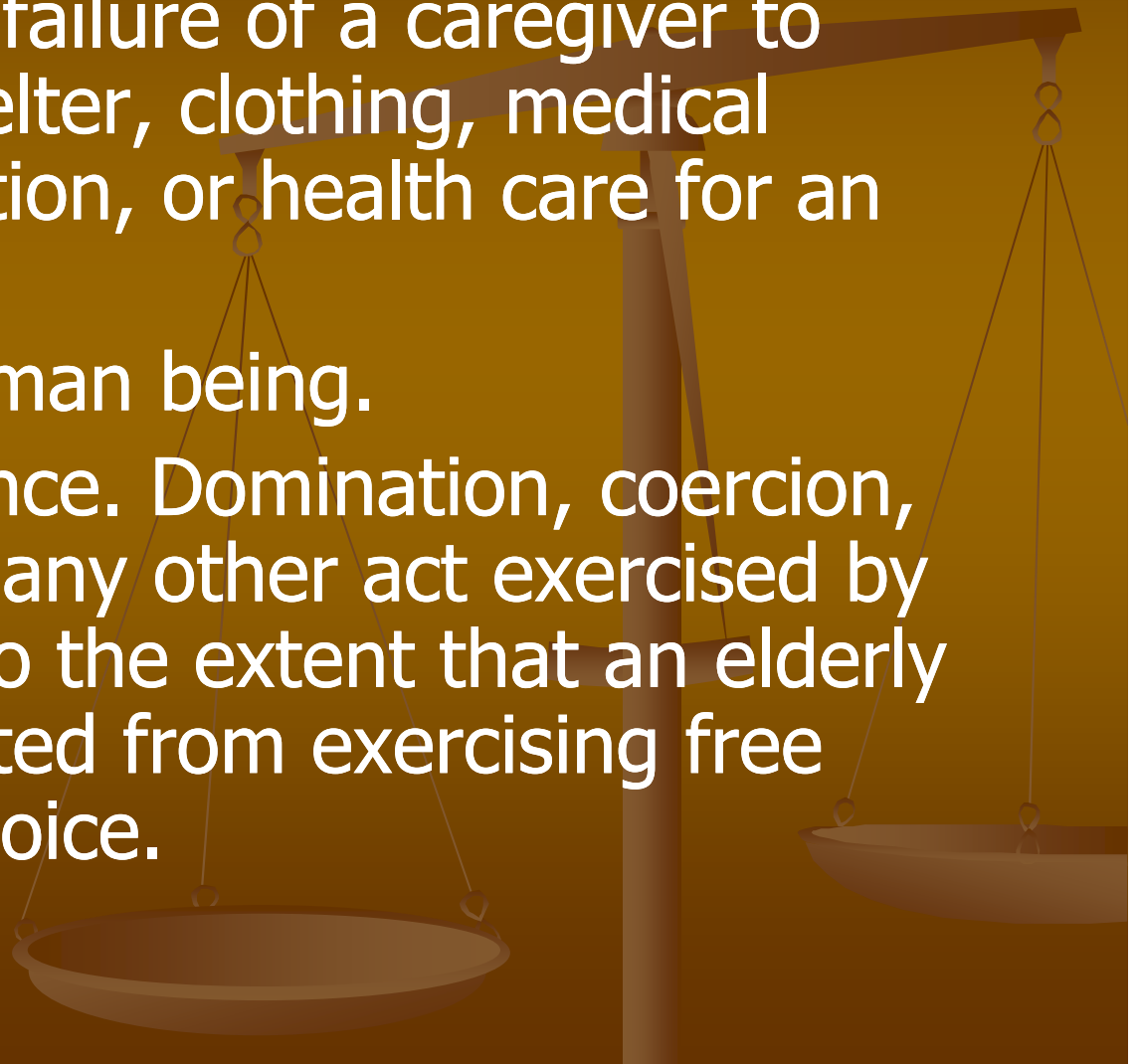


# Definitions cont.

- (5) Financial exploitation. The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly person's property with the intent to deprive the elderly person of his or her property or **the breach of a fiduciary duty to an elderly person by the person's guardian, conservator, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of the elderly person's property.**
- (6) Intimidation. A threat of physical or emotional harm to an elderly person, or the communication to an elderly person that he or she will be deprived of food and nutrition, shelter, property, prescribed medication, or medical care or treatment.

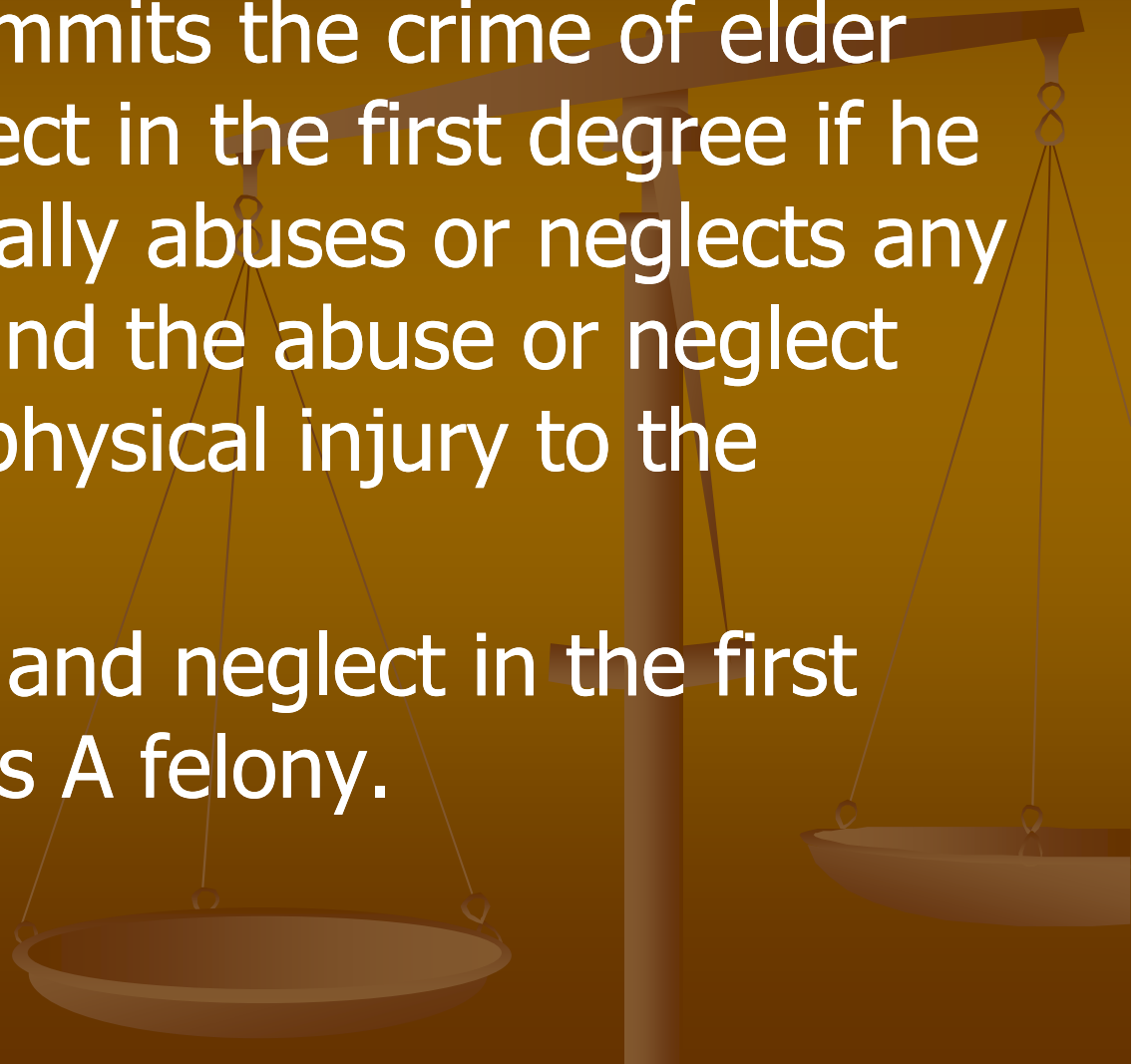
# Definitions cont.

- (7) Neglect. The failure of a caregiver to provide food, shelter, clothing, medical services, medication, or health care for an elderly person.
- (8) Person. A human being.
- (9) Undue influence. Domination, coercion, manipulation, or any other act exercised by another person to the extent that an elderly person is prevented from exercising free judgment and choice.



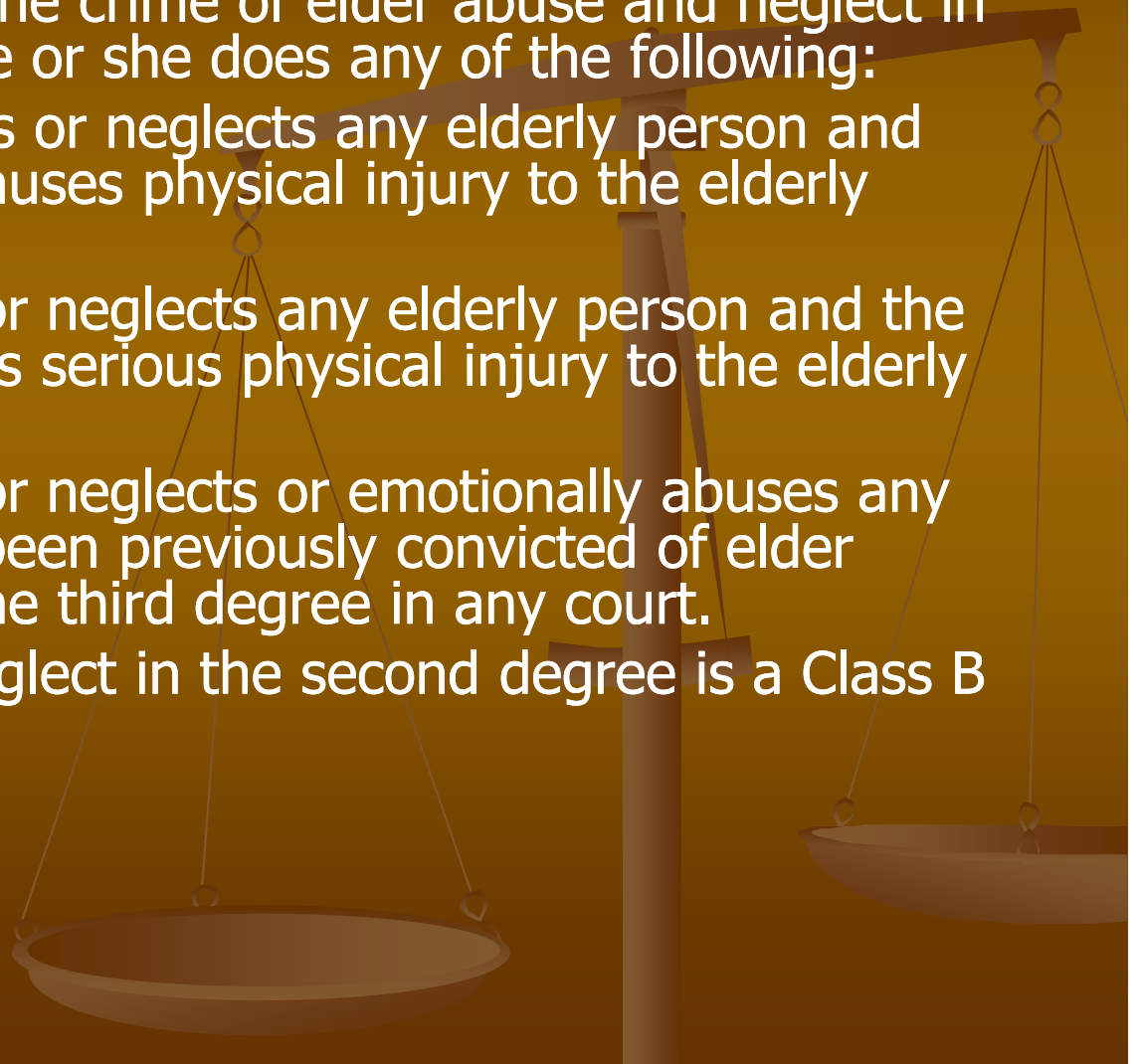
## § 13A-6-192. Elder abuse and neglect -- First degree.

- (a) A person commits the crime of elder abuse and neglect in the first degree if he or she intentionally abuses or neglects any elderly person and the abuse or neglect causes serious physical injury to the elderly person.
- (b) Elder abuse and neglect in the first degree is a Class A felony.



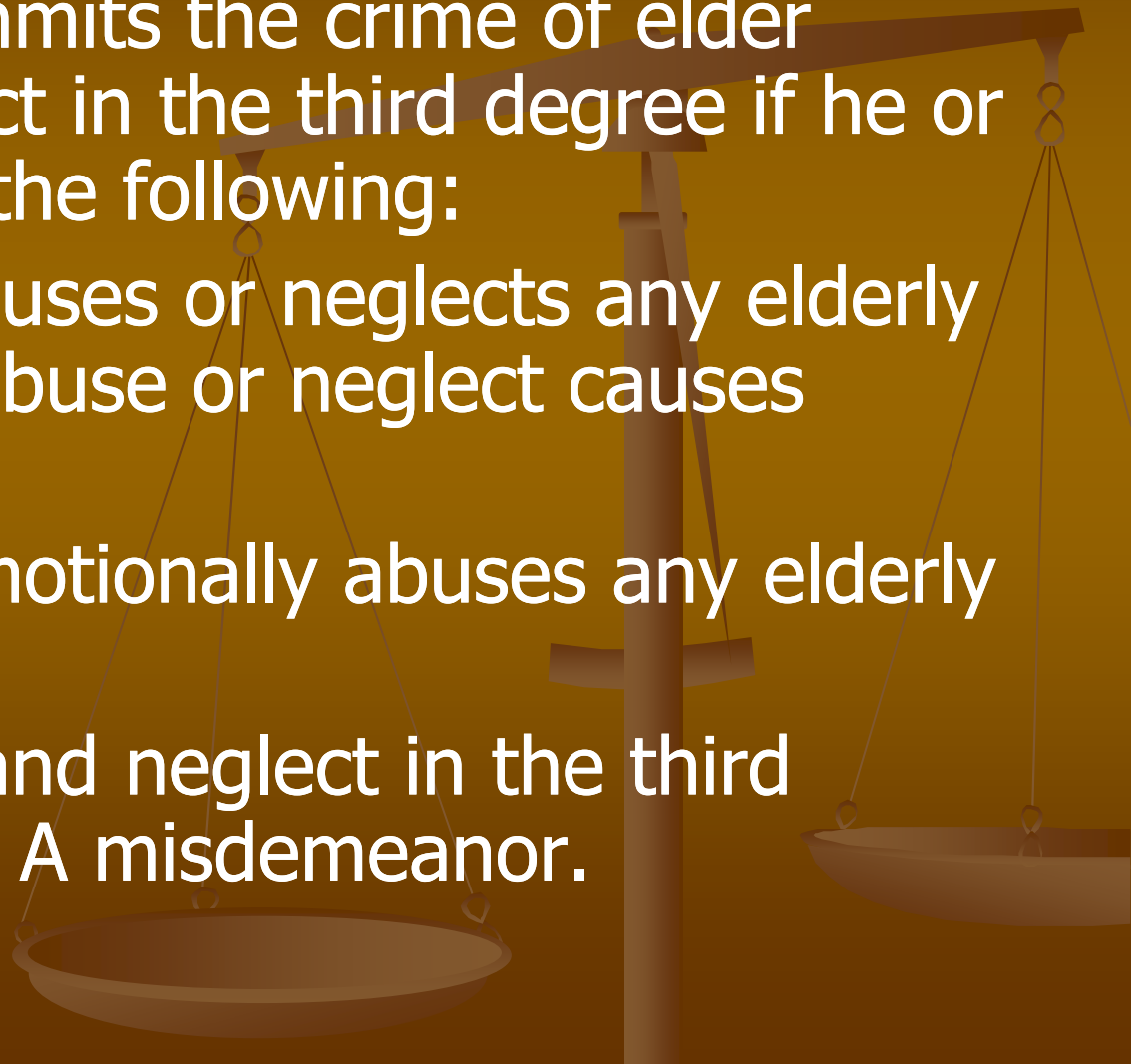
# § 13A-6-193. Elder abuse and neglect -- Second degree.

- (a) A person commits the crime of elder abuse and neglect in the second degree if he or she does any of the following:
  - (1) Intentionally abuses or neglects any elderly person and the abuse or neglect causes physical injury to the elderly person.
  - (2) Recklessly abuses or neglects any elderly person and the abuse or neglect causes serious physical injury to the elderly person.
  - (3) Recklessly abuses or neglects or emotionally abuses any elderly person having been previously convicted of elder abuse and neglect in the third degree in any court.
- (b) Elder abuse and neglect in the second degree is a Class B felony.



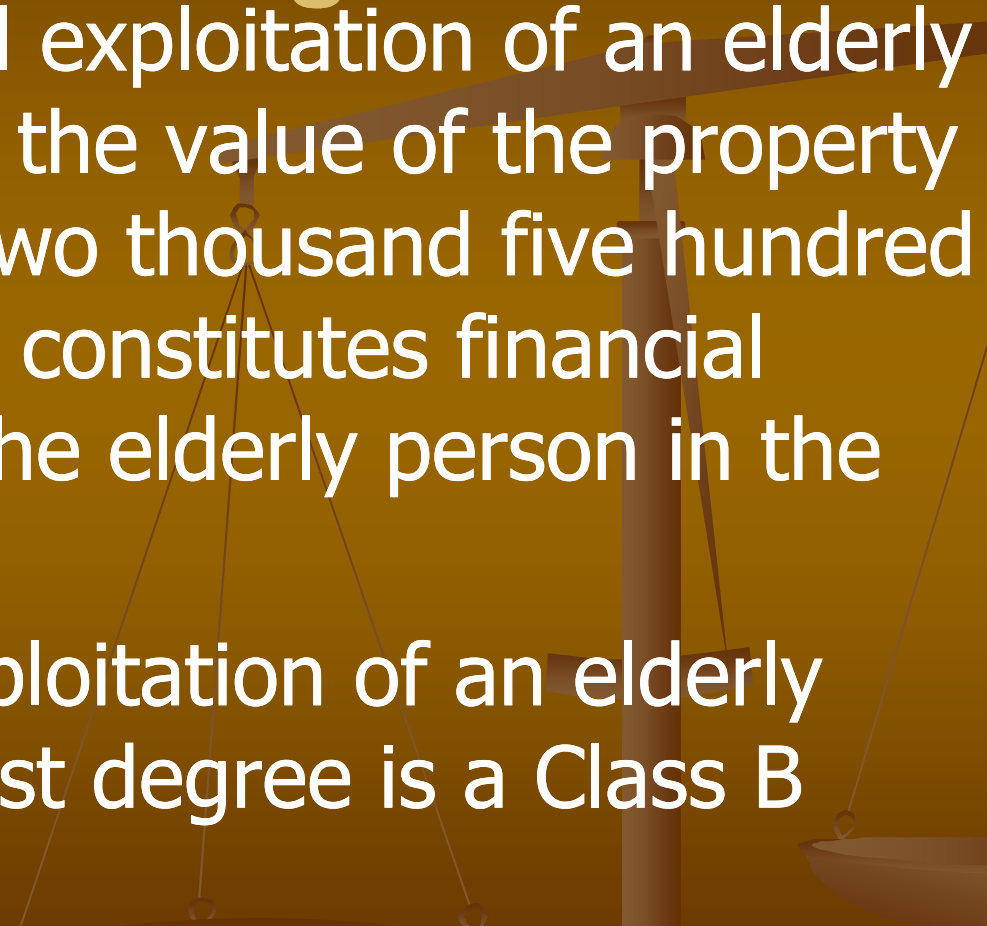
## § 13A-6-194. Elder abuse and neglect -- Third degree.

- (a) A person commits the crime of elder abuse and neglect in the third degree if he or she does any of the following:
  - (1) Recklessly abuses or neglects any elderly person and the abuse or neglect causes physical injury.
  - (2) Recklessly emotionally abuses any elderly person.
- (b) Elder abuse and neglect in the third degree is a Class A misdemeanor.



# **§ 13A-6-195. Financial exploitation of an elderly person**

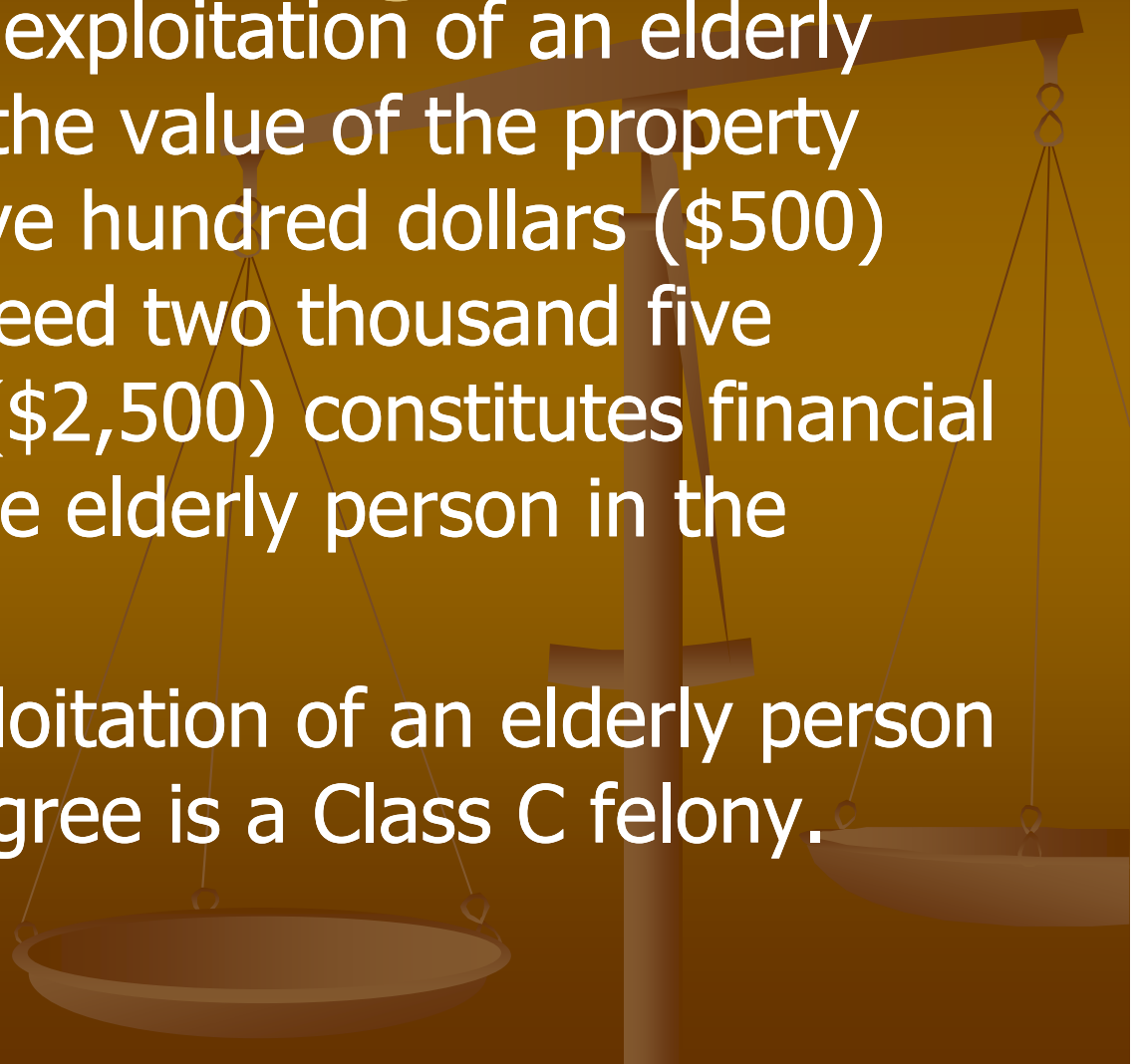
## **-- First degree.**

- (a) The financial exploitation of an elderly person in which the value of the property taken exceeds two thousand five hundred dollars (\$2,500) constitutes financial exploitation of the elderly person in the first degree.
  - (b) Financial exploitation of an elderly person in the first degree is a Class B felony.
- 

# **§ 13A-6-196. Financial exploitation of an elderly person**

## **-- Second degree.**

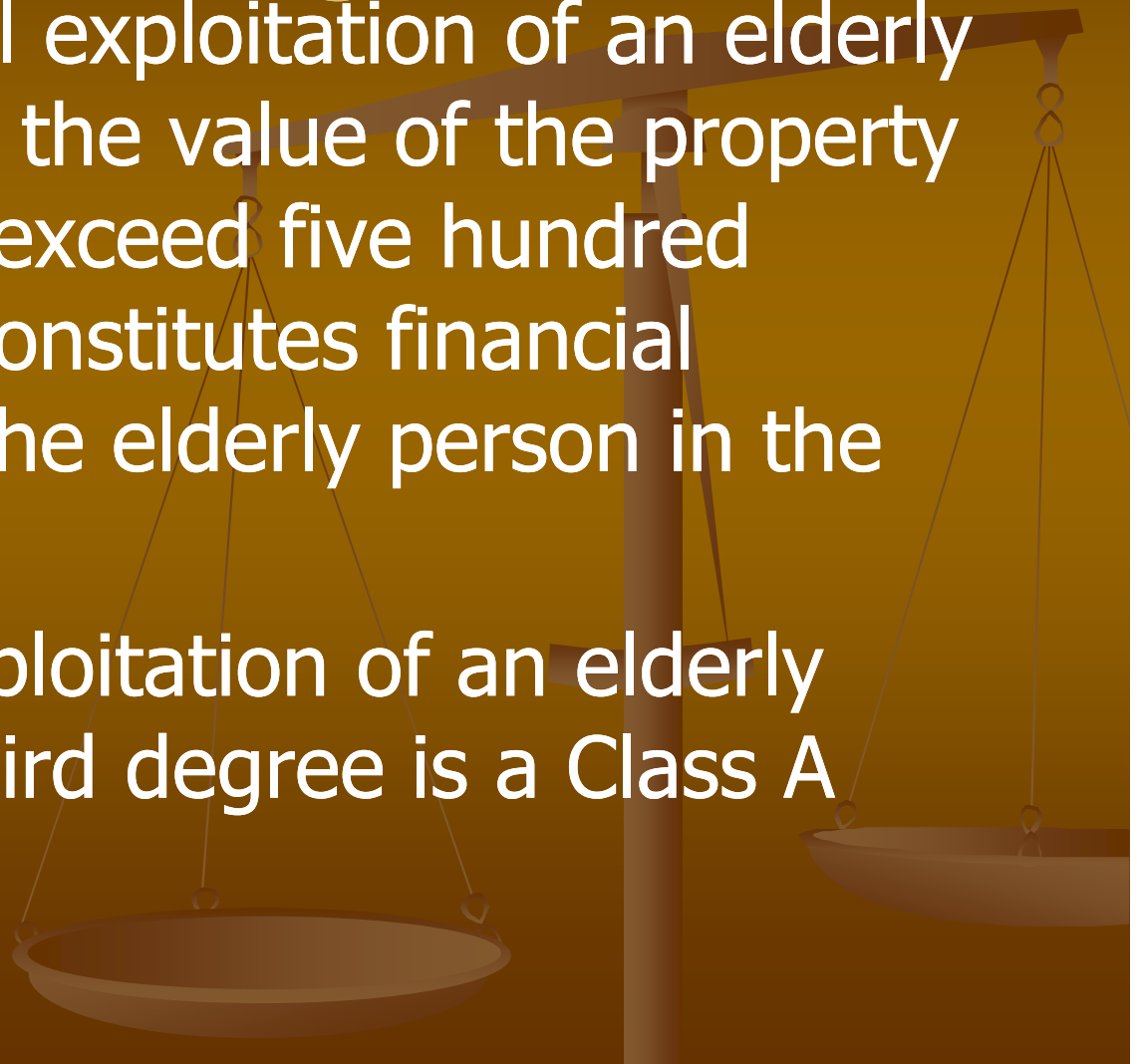
- (a) The financial exploitation of an elderly person in which the value of the property taken exceeds five hundred dollars (\$500) but does not exceed two thousand five hundred dollars (\$2,500) constitutes financial exploitation of the elderly person in the second degree.
- (b) Financial exploitation of an elderly person in the second degree is a Class C felony.



# **§ 13A-6-197. Financial exploitation of an elderly person**

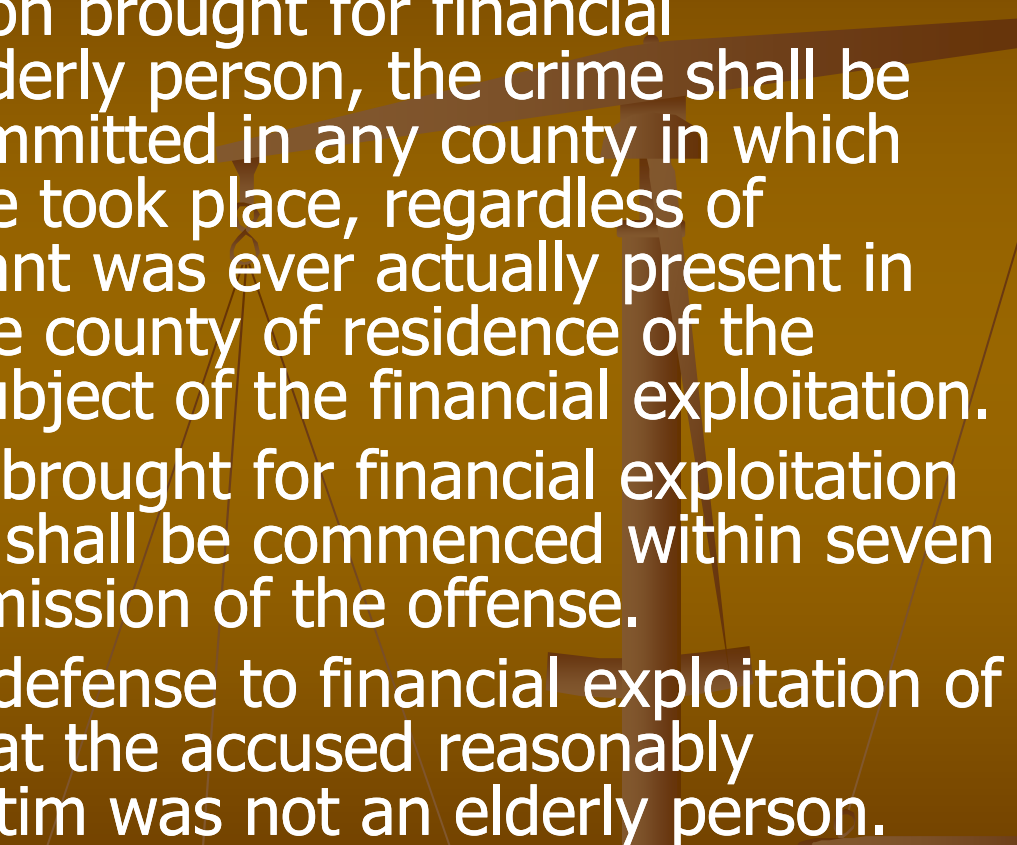
## **-- Third degree.**

- (a) The financial exploitation of an elderly person in which the value of the property taken does not exceed five hundred dollars (\$500) constitutes financial exploitation of the elderly person in the third degree.
- (b) Financial exploitation of an elderly person in the third degree is a Class A misdemeanor.



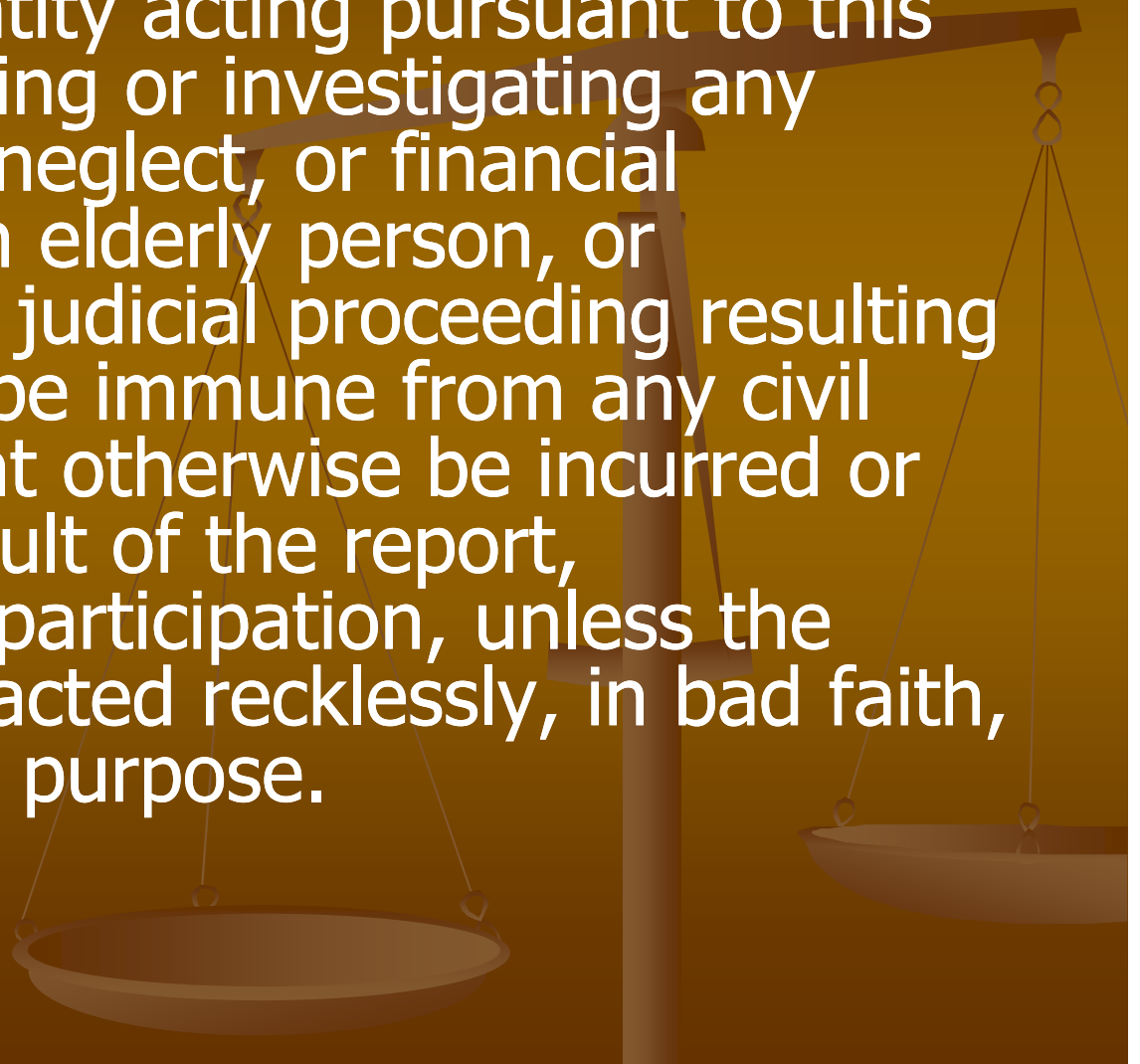
# § 13A-6-198. Financial exploitation of an elderly person

## -- Prosecution.

- (a) In any prosecution brought for financial exploitation of an elderly person, the crime shall be considered to be committed in any county in which any part of the crime took place, regardless of whether the defendant was ever actually present in that county, or in the county of residence of the person who is the subject of the financial exploitation.
  - (b) Any prosecution brought for financial exploitation of an elderly person shall be commenced within seven years after the commission of the offense.
  - (c) It shall not be a defense to financial exploitation of an elderly person that the accused reasonably believed that the victim was not an elderly person.
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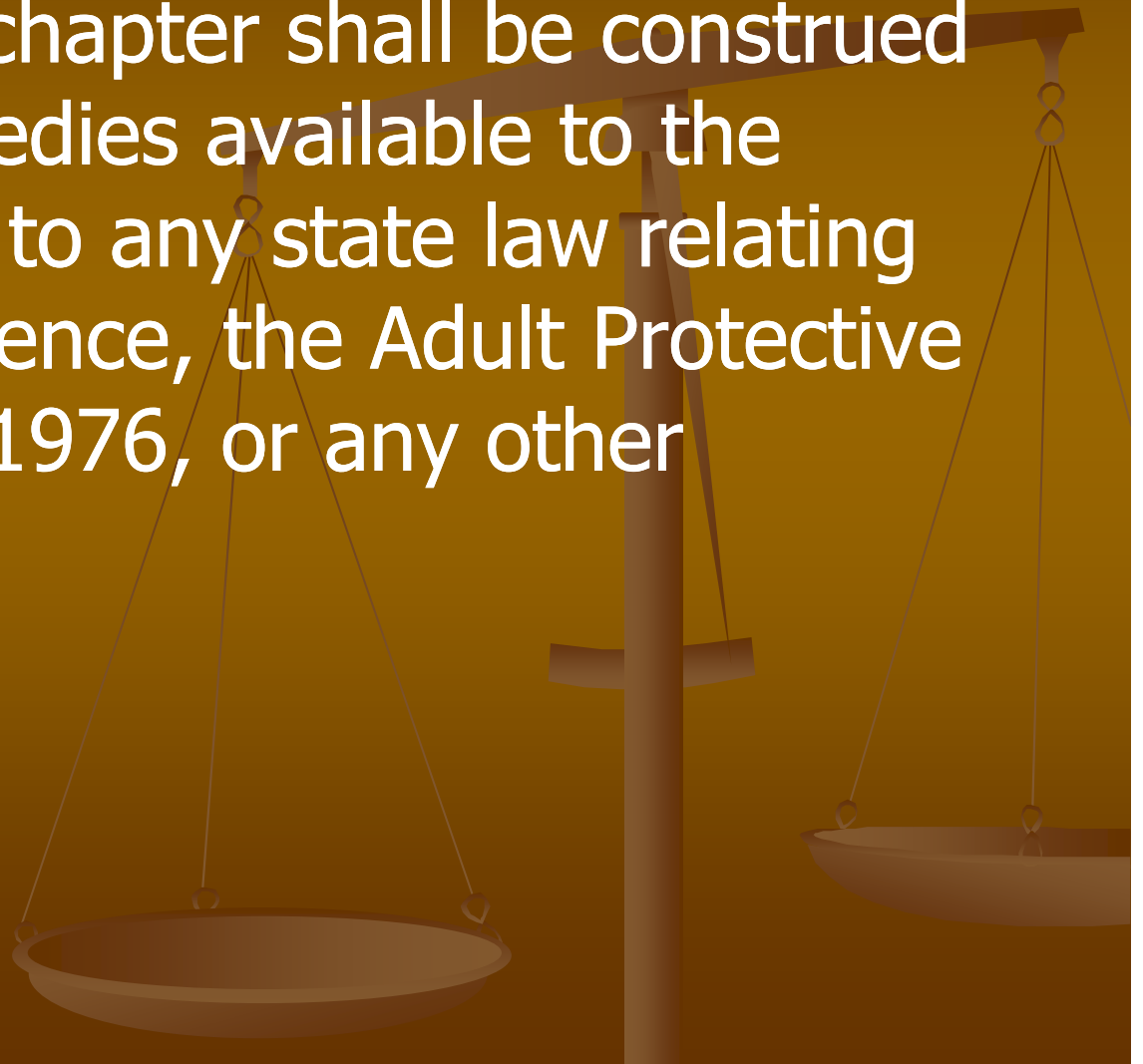
## **§ 13A-6-199. Liability of persons reporting or investigating violations.**

- Any person or entity acting pursuant to this chapter in reporting or investigating any report of abuse, neglect, or financial exploitation of an elderly person, or participating in a judicial proceeding resulting therefrom, shall be immune from any civil liability that might otherwise be incurred or imposed as a result of the report, investigation, or participation, unless the person or entity acted recklessly, in bad faith, or with malicious purpose.



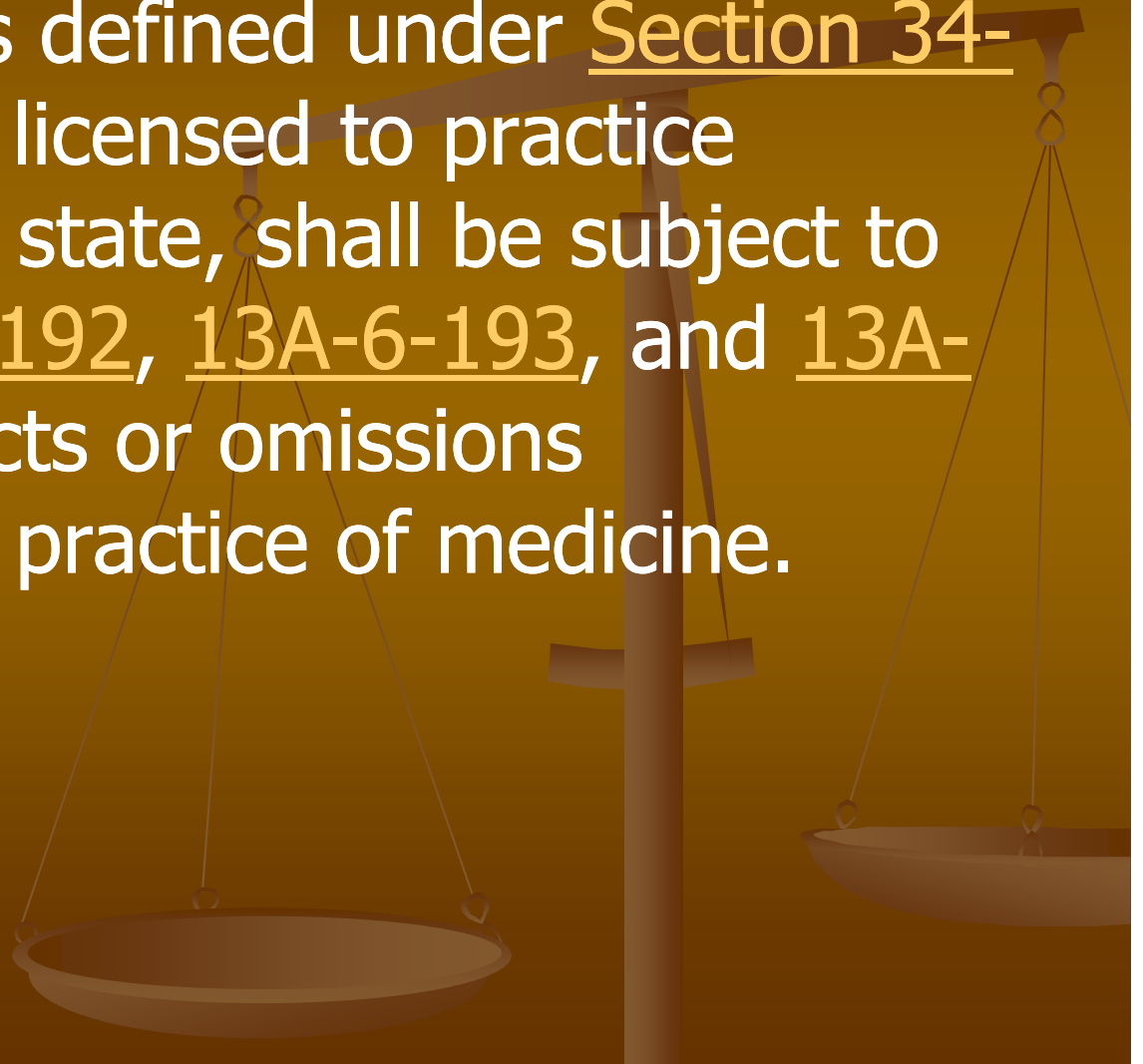
## § 13A-6-200. Remedies.

- Nothing in this chapter shall be construed to limit the remedies available to the victim pursuant to any state law relating to domestic violence, the Adult Protective Services Act of 1976, or any other applicable law.




## § 13A-6-201. Liability of physicians.

- No physician, as defined under Section 34-24-50.1, who is licensed to practice medicine in this state, shall be subject to Sections 13A-6-192, 13A-6-193, and 13A-6-194 for any acts or omissions constituting the practice of medicine.



# Complex Dynamics

- No single dynamic explains elder abuse
- “Depending on the victim-offender relationship and the type of elder abuse, elder abuse may resemble domestic violence, child abuse, or fraud or the phenomenon can stand on its own with the complexity of the relationships, individual vulnerabilities, and contexts in which it occurs.” (Amendola, et al, 2010)



***Multiple forms  
of elder abuse often  
occur at the same time***

# Types of Abuse

- Physical Abuse
- Sexual Abuse
- Psychological Abuse
- Neglect
- Financial Exploitation
- Abandonment



# Psychological Abuse

The infliction of anguish, pain, or distress through verbal or nonverbal acts

(National Center on Elder Abuse)

NCEA Elder Abuse Presentation:  
Psychological Abuse •  
[www.ncea.aoa.gov](http://www.ncea.aoa.gov)

# Psychological Abuse (Cont..)

- The systematic perpetration of malicious and explicit non-physical acts against a victim
- Often a pattern of tactics calculated to:
  - Undermine the victim's confidence and self-reliance
  - Create fear

# Psychological Abuse (Cont.)

- Often co-occurs with other forms and is used to facilitate commission of other forms (Conrad, 2011; Anetzberger, 1998)
- Takes several forms (Conrad et al, 2011)
  - Isolation
  - Threats and intimidation
  - Insensitivity and disrespect
  - Shaming and blaming

# Abuser Tactics

## Isolation

- Giving the “silent treatment”
- Denying the victim access to money or economic support
- Isolating the victim from family, friends, previously enjoyed activities, and information
- Withdrawing affection
- Lying or making misleading comments with intent to cause emotional pain
- Preventing the victim from eating, sleeping, or leaving their residence

# Abuser Tactics- (Cont.)

## Threats and Intimidation

- Harassing the victim
- Damaging the victim's property
- Threatening or physically abusing the family pet
- Threatening nursing home placement
- Threatening to injure, permanently disfigure, or kill the victim and/or loved ones.

# Abuser Tactics(Cont.)

## **Insensitivity and Disrespect**

- Verbally insulting or humiliating
- Treating an older adult like a servant
- Intentionally disrespecting or disregarding the cultural or religious values/needs of the adult

# Abuser Tactics (Cont.)

## Shaming and Blaming

- Treating an older adult like a child
- Willfully undermining an older person's abilities to make decisions, control their own life, and remain independent for personal benefit
- Blaming the older person for accidents
- Falsely claiming that an older person is demented

# Financial Exploitation

The illegal or improper use of a vulnerable adult's funds, property, or assets.

(National Center on Elder Abuse)

# Financial Exploitation ( Cont.)

- May occur by itself, or
- May occur in conjunction with:
  - Physical abuse
  - Neglect
  - Psychological/emotional abuse
- Self-neglect may be an outcome of financial loss
- Co-occurring forms may make it easier to commit financial exploitation

# Two Kinds of Financial Exploitation

Research shows that there are two distinct forms of elder financial exploitation:

## 1) **Pure** financial (financial exploitation only)

- Perpetrators are non-relatives, not financially dependent on the victim and physically healthy
- Shorter duration than hybrid form; primarily fraud
- Lower financial loss per case

# Hybrid Financial Abuse

## 2) **Hybrid** (co-occurs with physical abuse or neglect)

- Relatives financially dependent on the elderly victim
- Victim typically financially independent but physically dependent on the perpetrator
- Longer duration than pure form; primarily theft
- Greater loss per case (Jackson and Hafemeister, 2011)

# Perpetrators

## ■ **Persons the Older Adults Knows and Trusts**

- Intimate partners, family members, and friends
- Caregivers
- Persons who befriend an older person (e.g., sweetheart scams)
- People with unique trust relationships

## ■ **Strangers**

# Abuse of Legal Authority

## ■ Powers of Attorney (POA)

- A written document created by a person with capacity (principal) authorizing another (agent) to make decisions for the principal
- Agent's authority is limited to what is stated in POA

## ■ Guardianship/conservatorship

- A person appointed by the court to manage the personal or financial affairs of an incapacitated person unable to handle his or her own affairs
- Supervised by the court

# Legal Authority and Financial Exploitation



- Guardianships/conservatorships and powers of attorney are not licenses to steal!
- Improper use of POAs and guardianships/conservatorship may be a crime.

# Consent

- Mental capacity
  - Person giving consent must have decision making capacity
- Knowledge of true nature of act
  - Any fraud, deceit, misleading statements
- Acted freely and voluntarily

# Undue Influence

- Similar to brainwashing, an exploiter uses manipulation to convince another person to make decisions contrary to his/her own best interest
- Commonly involves deception to take over victim's free will
- "Process not an event" – pattern of behaviors
- Victim may lack capacity – but not always
- Victims may be vulnerable due to grief or isolation

# Indicators: Potential Victim

- Changes in the older adult's appearance, health status, personal habits
- Changes in long time banking or spending patterns
- A confused older person signs something without understanding consequences

# Indicators: Potential Exploiter

Another person:

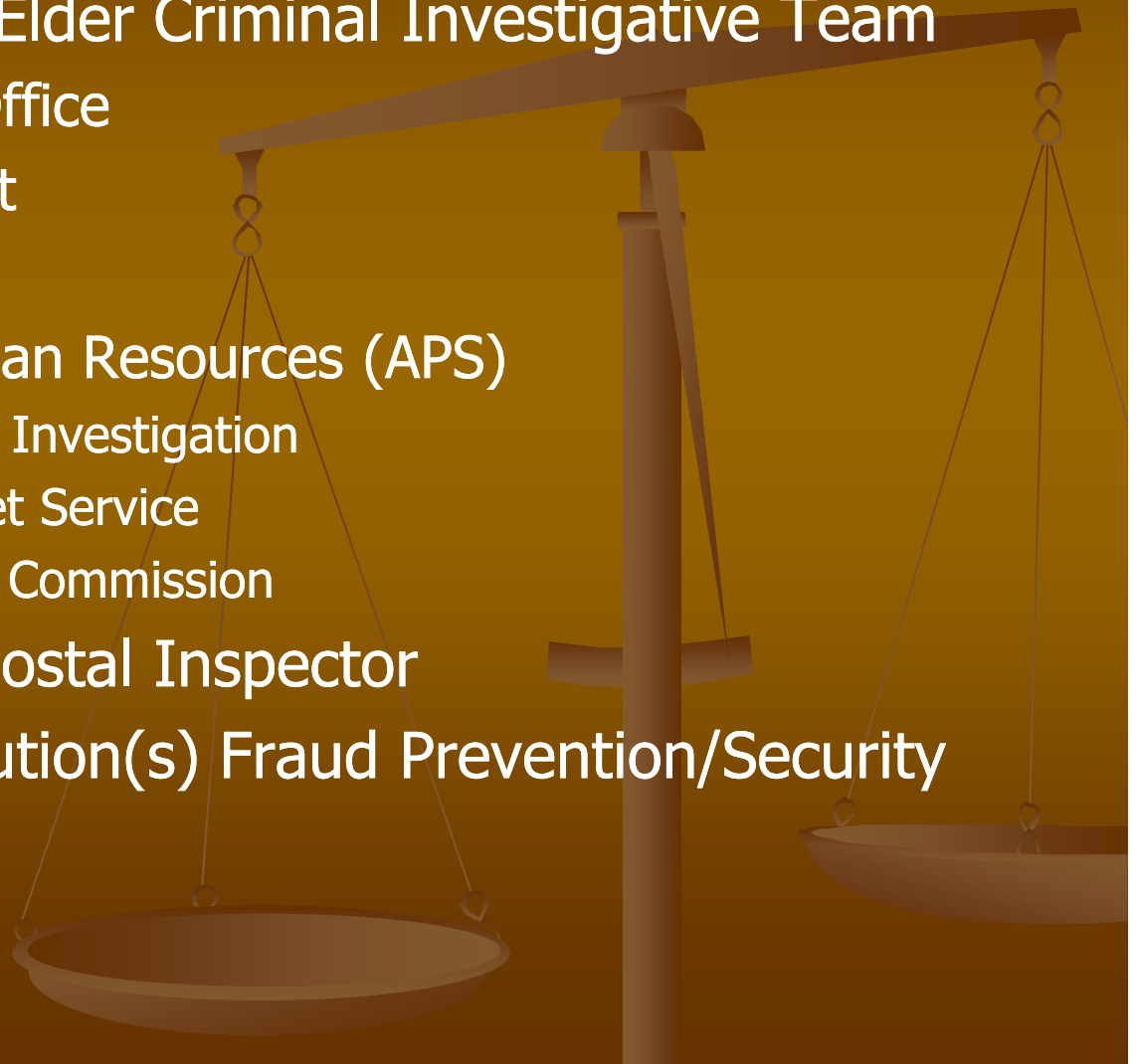
- Cashing an older adult's check or using credit/debit card without authorization or permission
- Forging the older adult's signature
- Coercing or deceiving the older adult into signing any document

## Other Indicators

- Unexplained changes in wills or title documents
- Increased telephone solicitations for funds
- Missing personal property
- Funds wired out of country for mysterious reasons
- Missing or redirected mail
- Missing personal property
- Names added to older adult's bank accounts

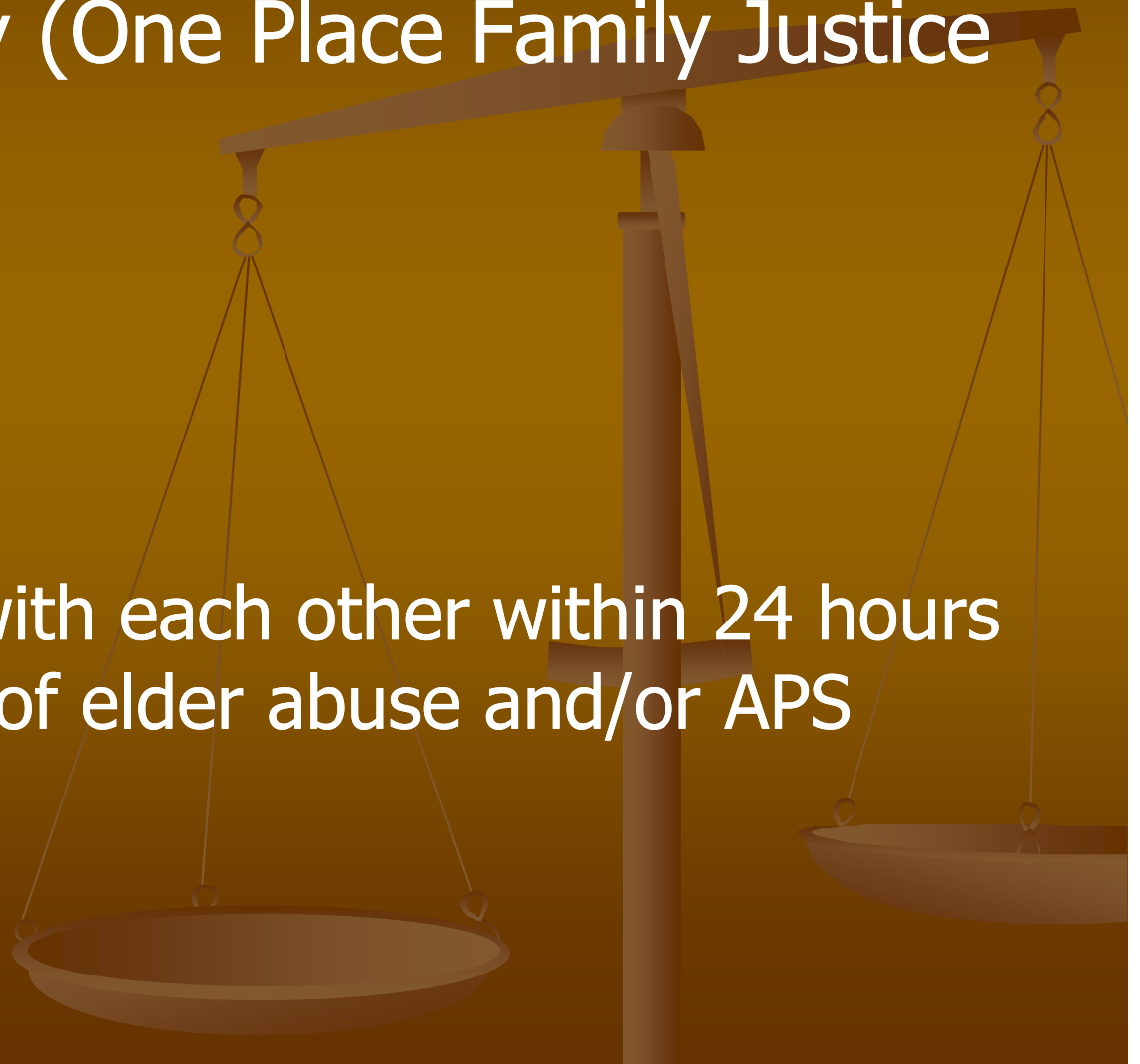
# Collaborative Approach to Investigation

- Montgomery County Elder Criminal Investigative Team
  - District Attorney's Office
  - Sheriff's Department
  - Police Department
  - Department of Human Resources (APS)
    - Alabama Bureau of Investigation
    - United States Secret Service
    - Alabama Securities Commission
    - United States Postal Inspector
    - Financial Institution(s) Fraud Prevention/Security



# Montgomery APS/Elder Protocol

- District Attorney (One Place Family Justice Center)
- Sheriff
- Police
- DHR
  - Communicate with each other within 24 hours of initial intake of elder abuse and/or APS complaint



# Court

It can be a maze

CD Assessment  
Psych/Mental Health  
Parenting Education  
Visitation  
Individual/Family Therapy  
DV Classes

Court Oversees and  
Sanctions Plan

Child Placement

Conditions of  
Release

No Contact  
Order

Arraignment  
Hearing

Pre-Trial/  
Hearing

Trial

Sentencing

Monitoring/  
Probation

DV Unit Contacted

Child Protection  
Screening

Service Plan

EPC Hearing

Emergency  
Placement

Safety  
Assessment

Risk  
Assessment

Safety Plan

Law Enforcement  
Notified

Child Maltreatment  
Assessment

Child Welfare  
Assessment

CP Investigation

Judge Reviews

Files OFP

Ex Parte  
Denied

Ex Parte  
Granted

Sheriff Serves  
Respondent

Civil Court  
Hearing

OFP  
Granted

OFP  
Denied

OFP Filed

Reliefs  
Granted

Supervised  
Exchange/  
Visitation

Eviction Hearing

Sheriff Evicts

Warning Given

Landlord/HRA  
Notified

Seeks  
Shelter

Advocacy  
Program

911 Call

Police  
Investigate

Files for  
Divorce

Family Court  
Hearing

Interviews by  
Evaluator

Temporary  
Custody

Custody  
Evaluation

Final Divorce  
Hearing

Custody  
Hearing

Child Support  
Established

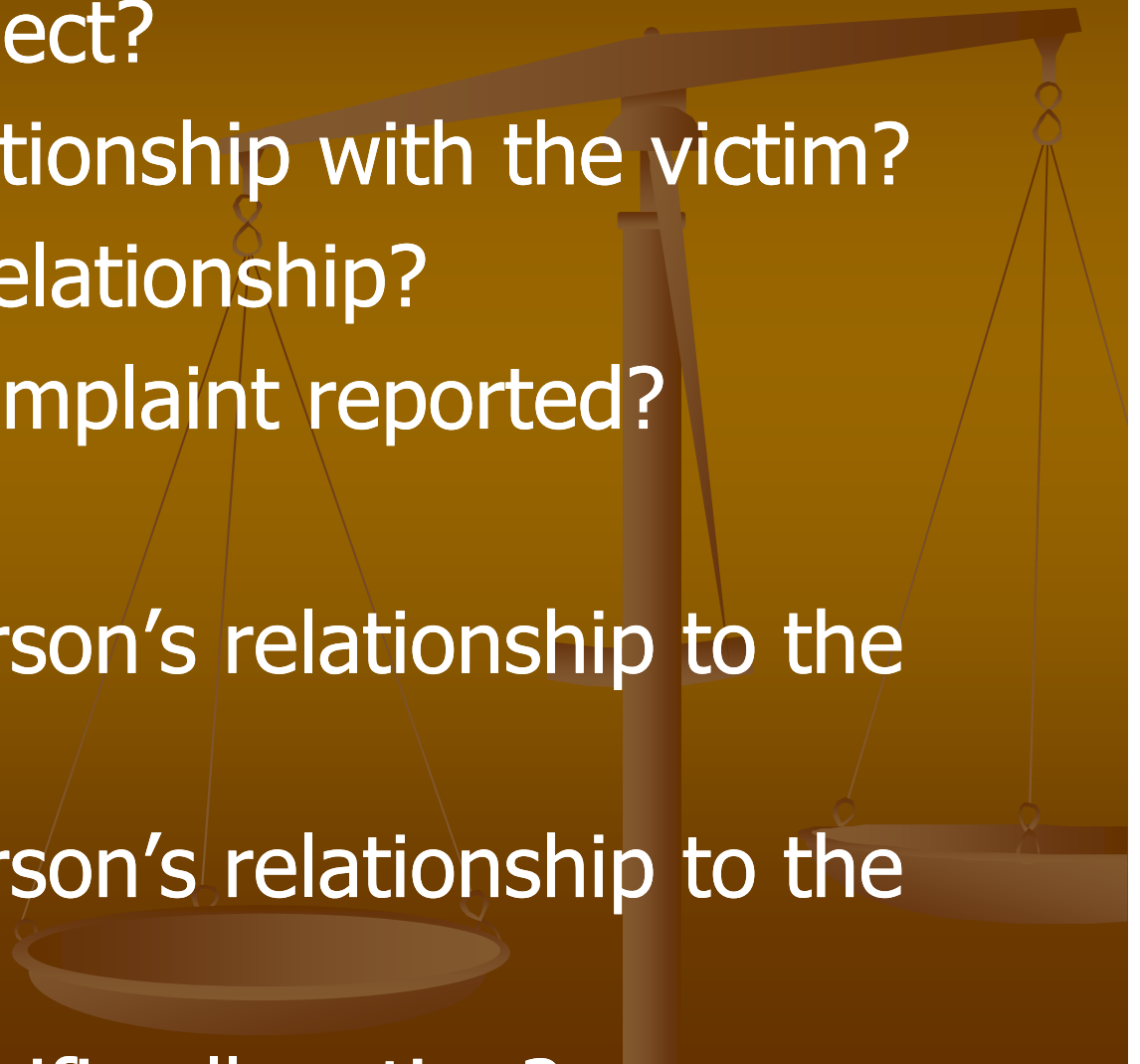
Custody  
Awarded

Supervised  
Exchange/  
Visitation



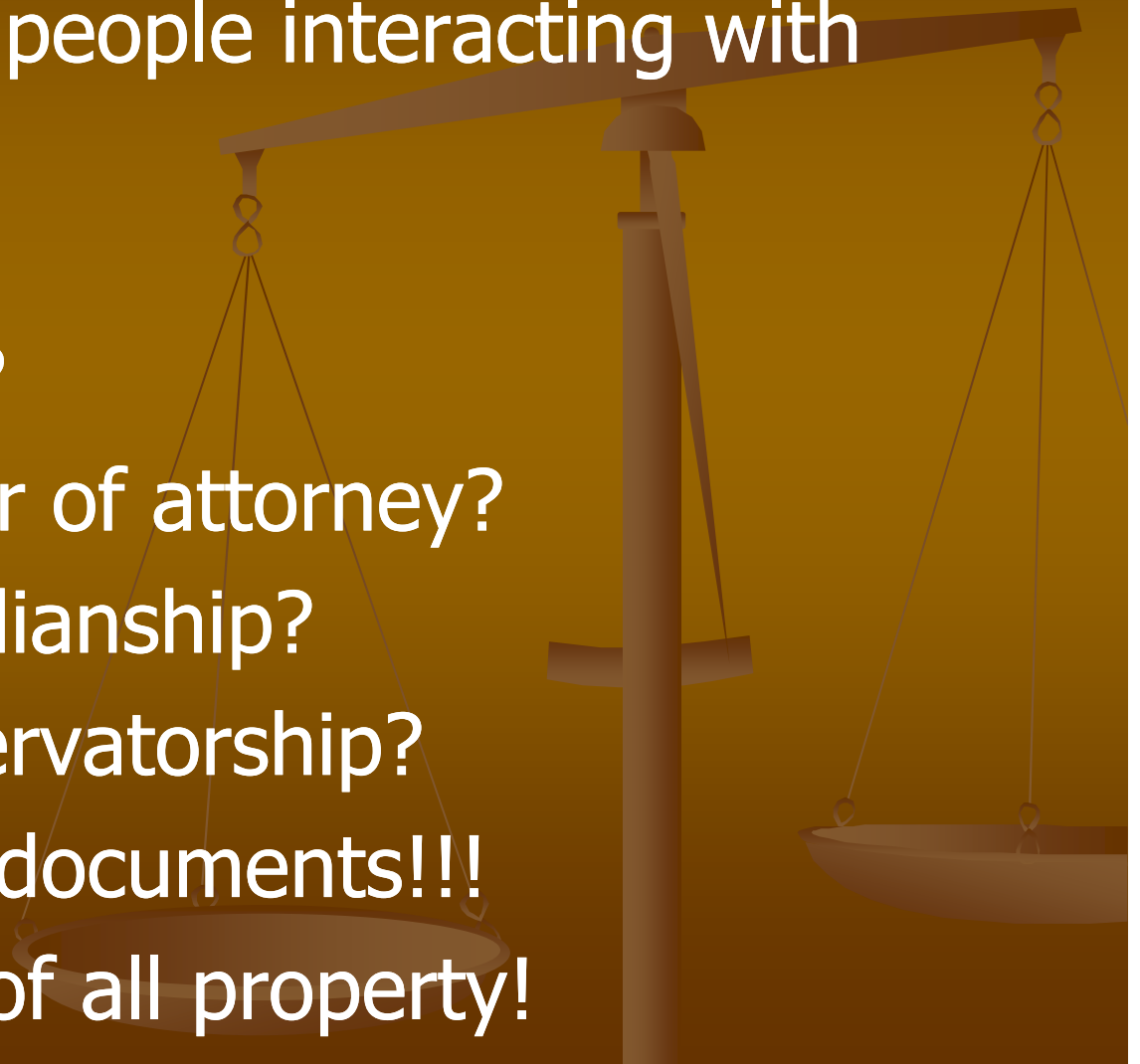
# Elder Abuse Investigation ?s

- Who is the suspect?
- What is the relationship with the victim?
- How long of a relationship?
- How was the complaint reported?
- Who reported?
- What is that person's relationship to the victim?
- What is that person's relationship to the defendant?



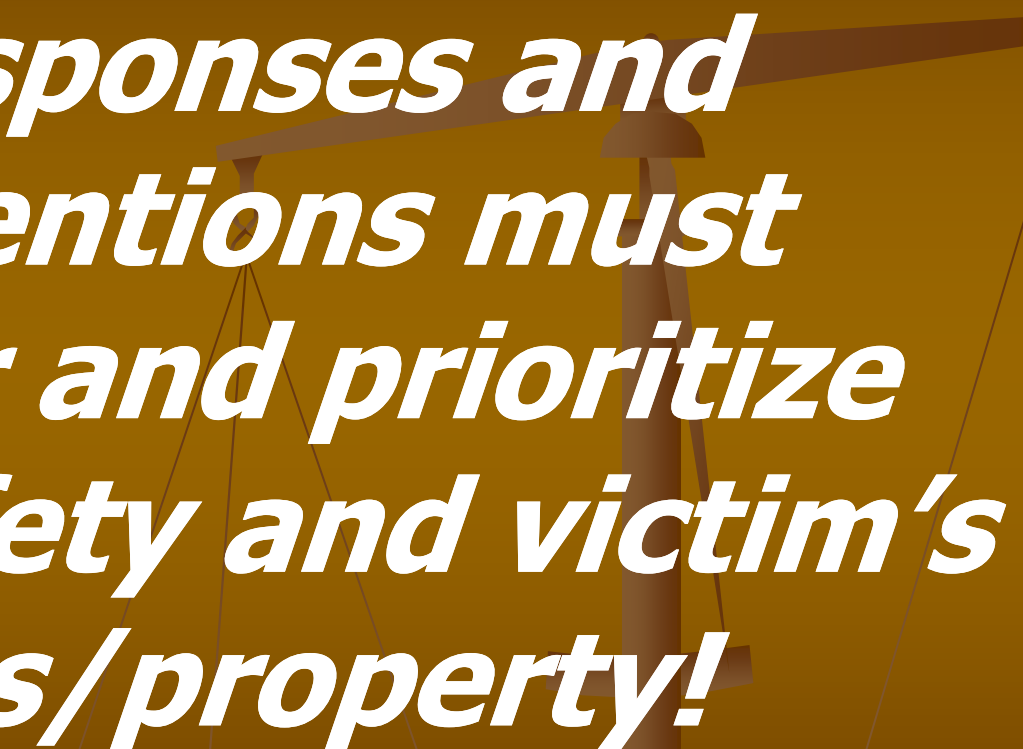
# Elder Abuse Investigation ?s

- Who are all the people interacting with victim?
- Is there a will?
- Is there a trust?
- Is there a power of attorney?
- Is there a guardianship?
- Is there a conservatorship?
- Get those legal documents!!!
- Check on titles of all property!

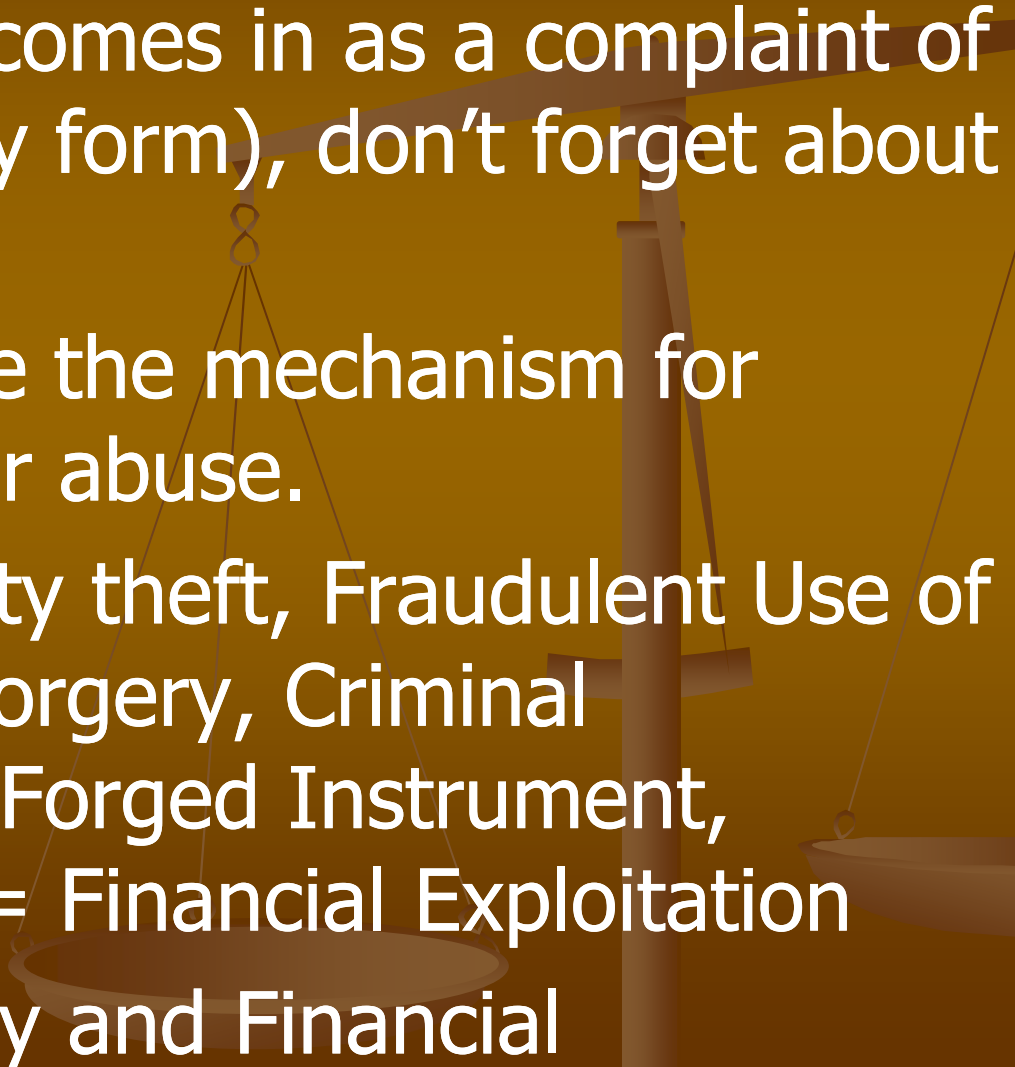


# Victim Safety

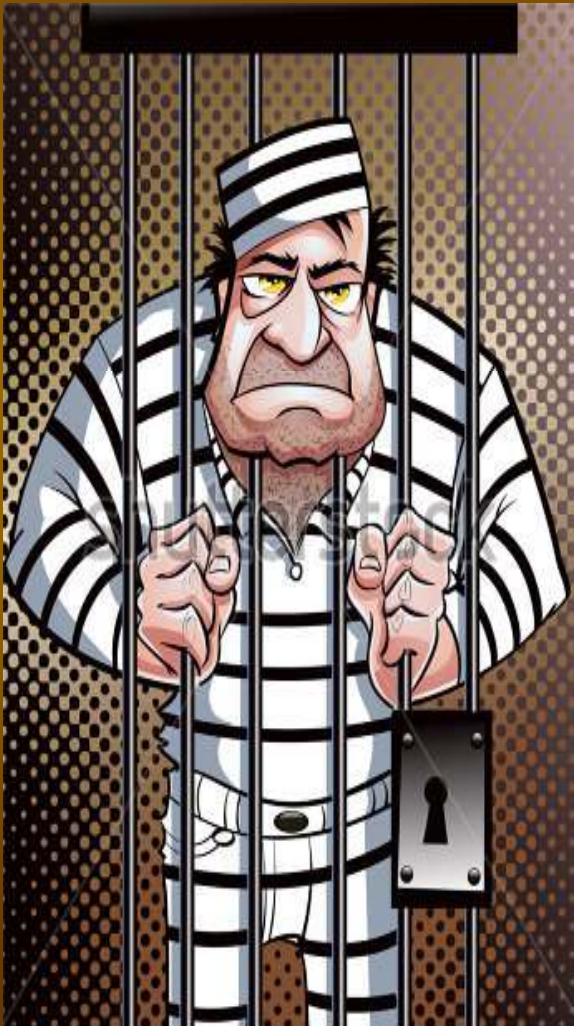
***All responses and interventions must consider and prioritize victim safety and victim's assets/property!***



# Get the Biggest Bang for your Buck!

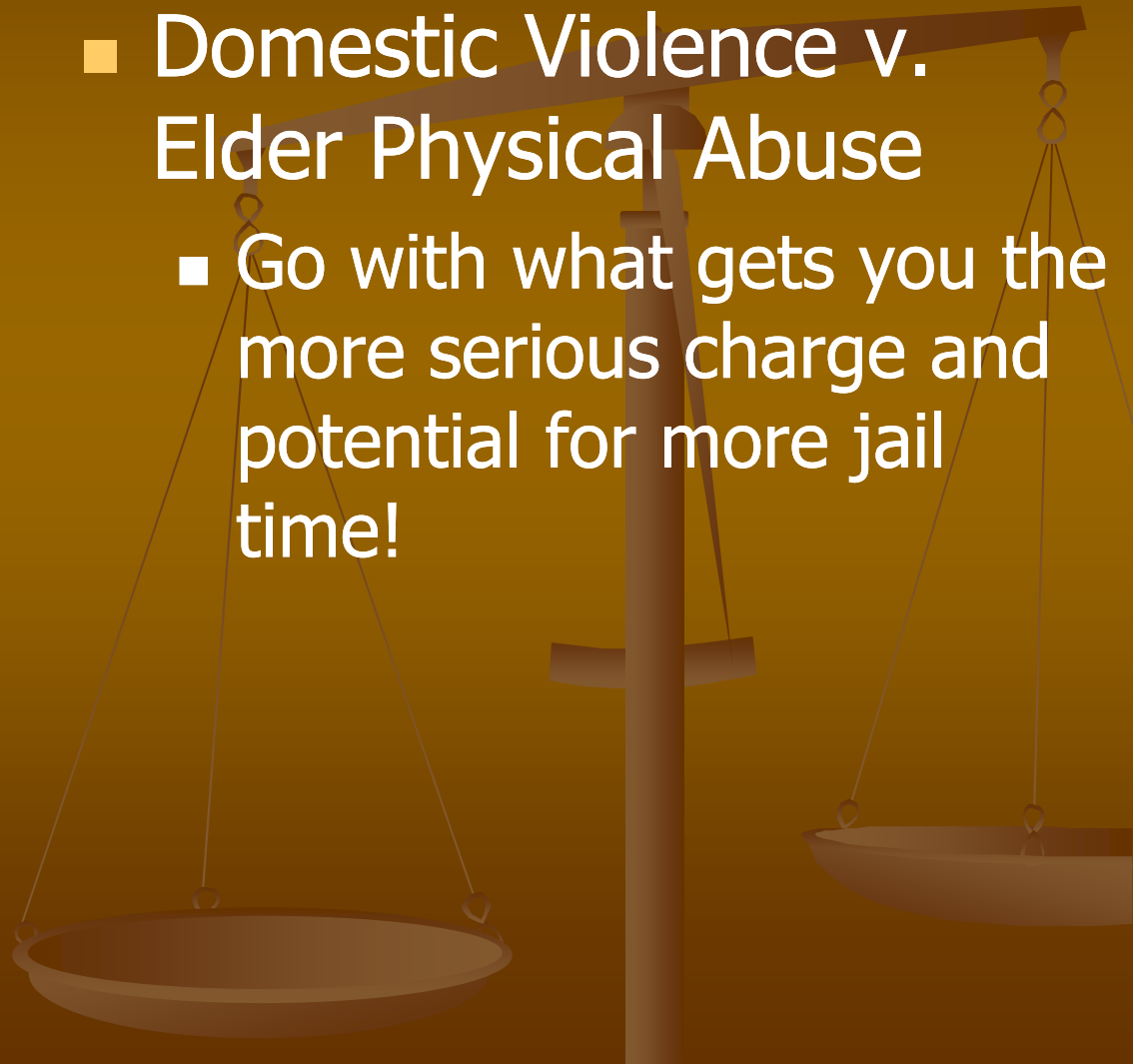
- Just because it comes in as a complaint of elder abuse (any form), don't forget about other crimes.
  - Other crimes are the mechanism for committing elder abuse.
  - Example: Identity theft, Fraudulent Use of a Credit Card, Forgery, Criminal Possession of a Forged Instrument, Criminal Fraud = Financial Exploitation
  - Theft of Property and Financial
- 

# Biggest Bang for Your Buck



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- Domestic Violence v. Elder Physical Abuse
  - Go with what gets you the more serious charge and potential for more jail time!



# With Elder Abuse Cases: Listen!

- Listen to older adults and others who may tell you about suspicions of abuse
- Do not discount an older adult's claim simply because of a cognitive impairment
- Look for elder abuse indicators and behavior changes
- Ask questions even if you do not suspect abuse to encourage disclosures

## If The Older Adult Can Answer Questions, Consider Asking(Cont.)

- Do you feel safe? Is anyone hurting you or scaring you?
- Is anyone asking you to do things that you do not understand or that make you uncomfortable?
- Has anyone taken things that belong to you without asking or without your approval?
- Do you rely on anyone else for help? What kind of help? Does that person ever fail to help you meet your needs?

\*Ask privately in an area where you will not be overheard

## If The Older Adult Can Answer Questions, Consider Asking

- Do you regularly see friends and family? When is the last time you saw them?
- Do friends and family visit you? How long has it been since they visited?
- Are you concerned about your finances?
- Are you afraid of anyone in your life?

\*Ask privately in an area where you will not be overheard

# Work in Partnership

- Refer to appropriate agencies with permission, and...**if mandated, explain what you are doing and why**
- Maintain a working relationship with all senior providers in your area, know who to refer to...



# Partners...Collaborators

- Sexual Assault and Domestic Violence Advocates
- Adult Protective Services
- Health Care Providers
- Law Enforcement
- Prosecutors and the Courts
- Social Services
- Financial Institutions
- Faith Communities
- Senior Centers.....and others.....



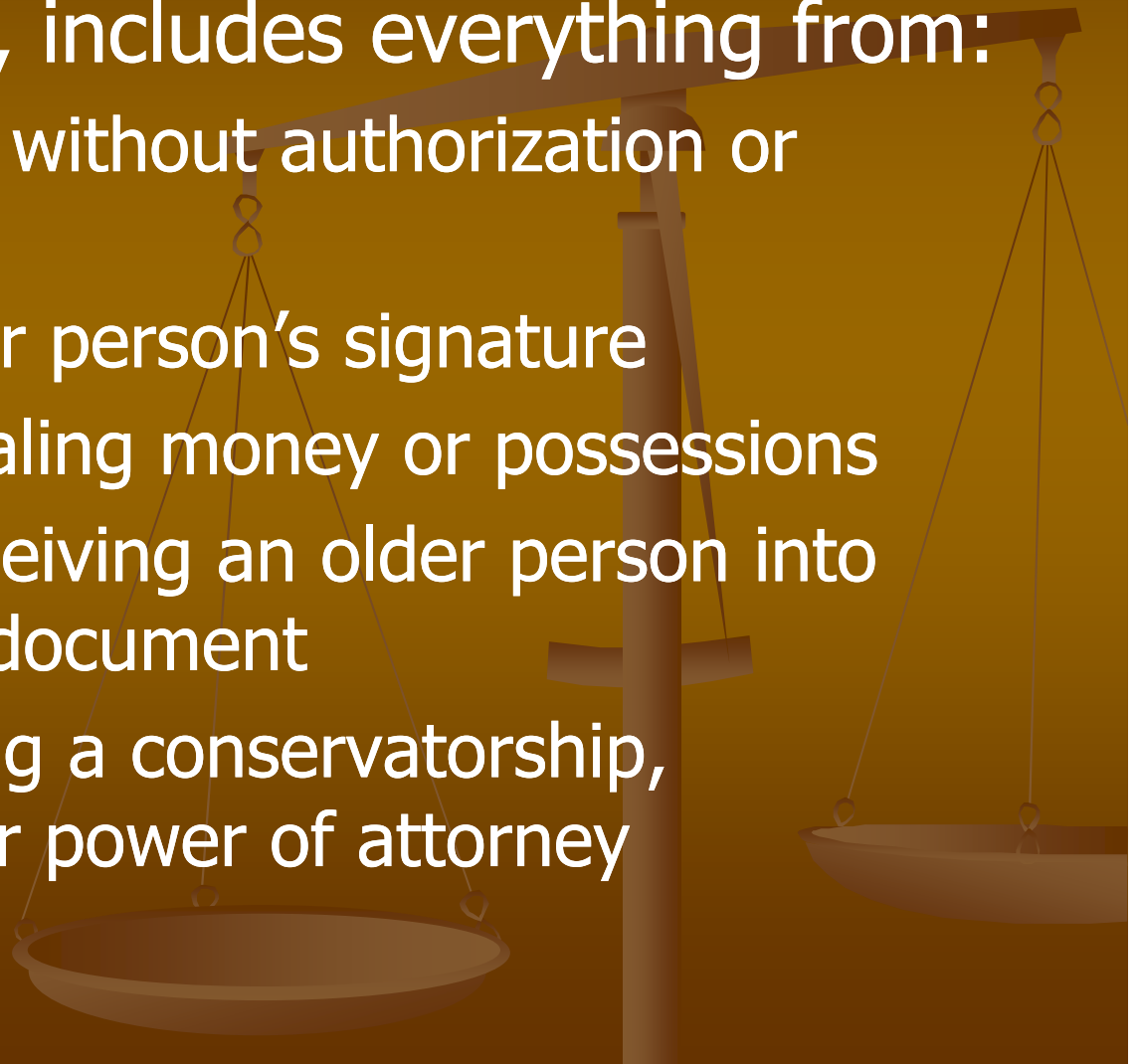
# Civil Side of Elder Abuse

- Types of Elder Abuse:
  - Abuse (physical)
  - Emotional Abuse
  - Neglect
  - Financial Exploitation
    - Power of Attorney Abuse
- Civil Remedies
- Prevention



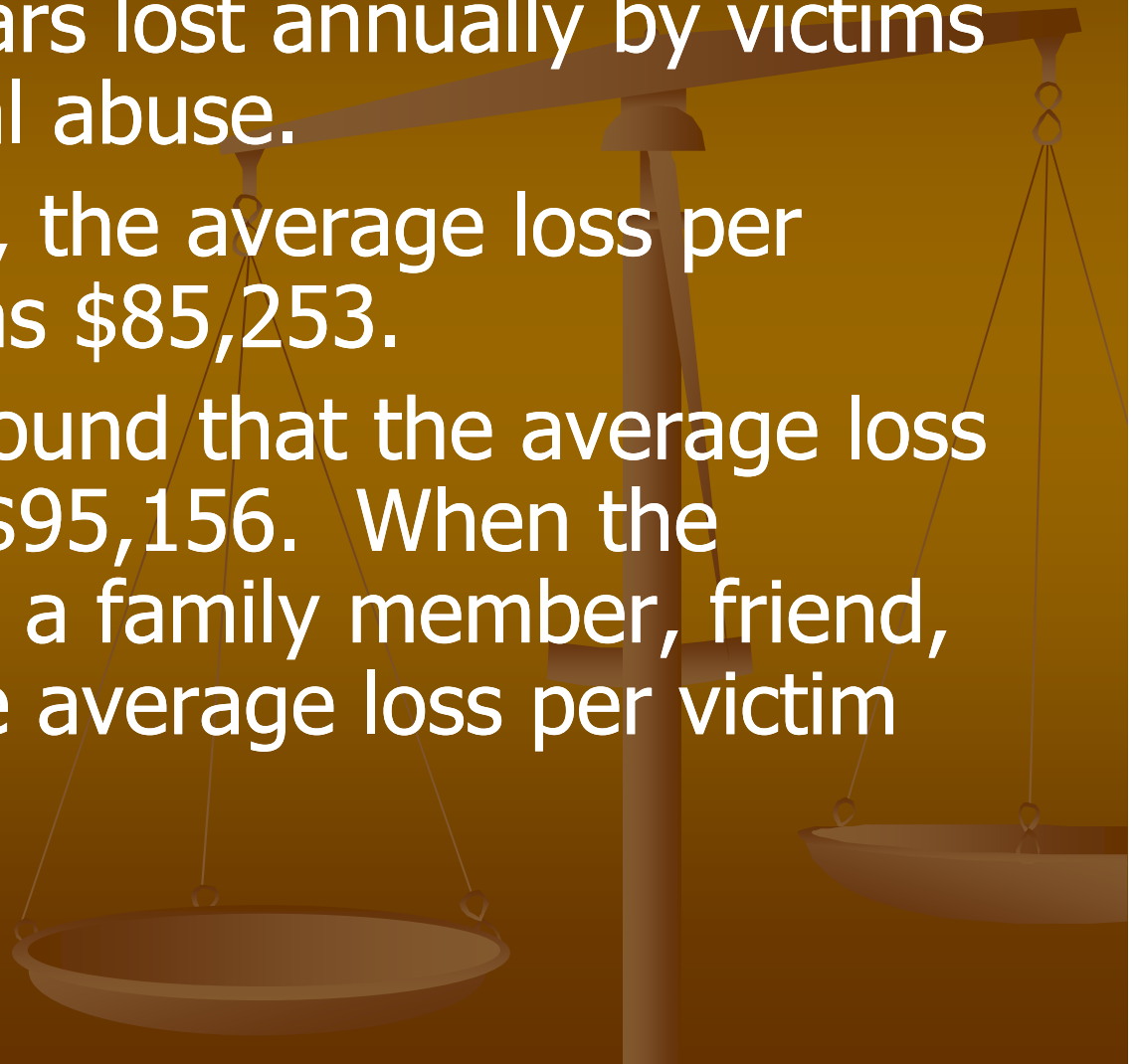
# Financial Exploitation

- Broadly defined, includes everything from:
  - Cashing checks without authorization or permission
  - Forging an older person's signature
  - Misusing or stealing money or possessions
  - Coercing or deceiving an older person into signing a legal document
  - Improperly using a conservatorship, guardianship, or power of attorney



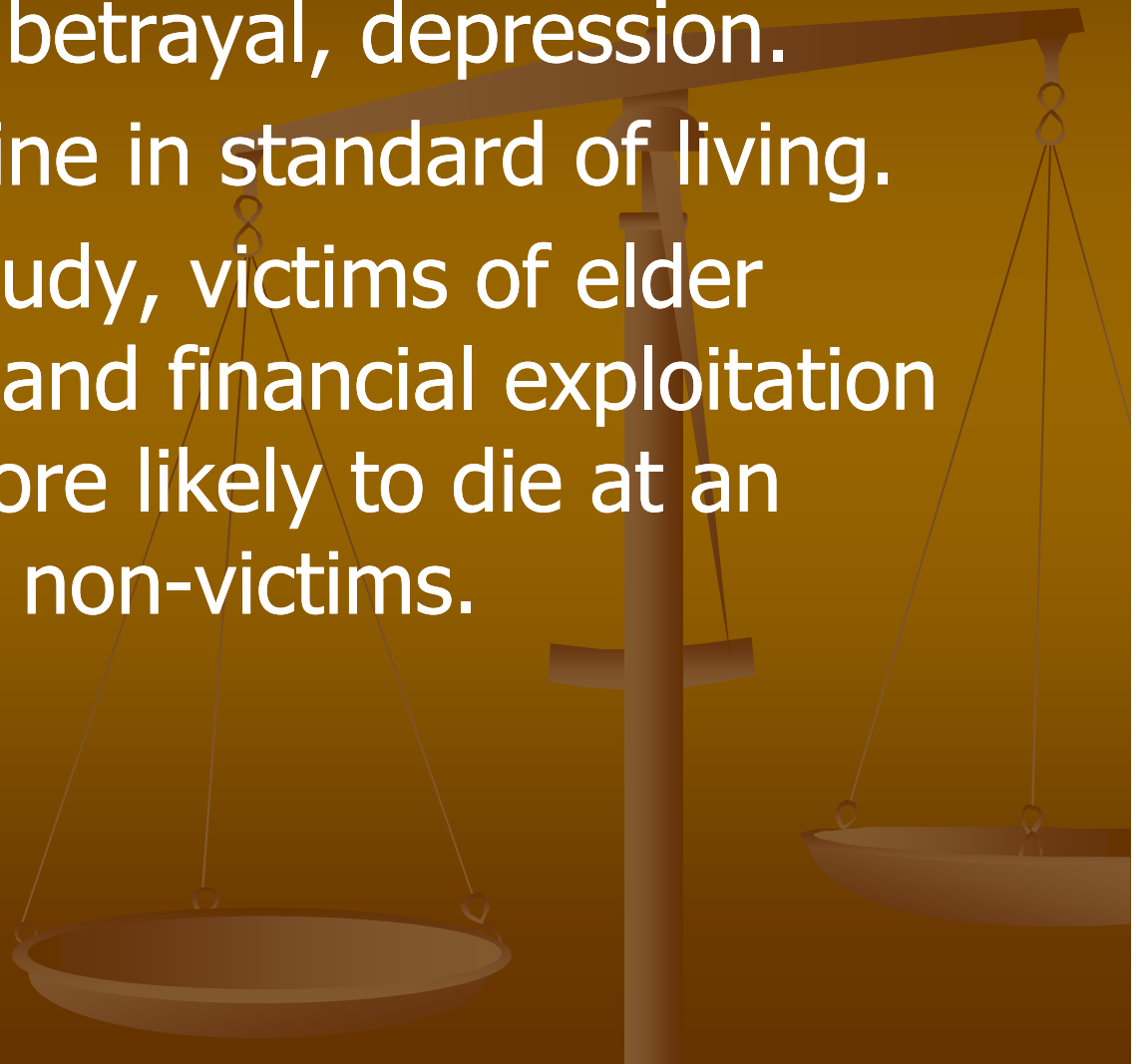
# Financial Exploitation – Cost \$

- \$2.9 billion dollars lost annually by victims of elder financial abuse.
- In a Utah study, the average loss per *actual* victim was \$85,253.
- Another study found that the average loss per victim was \$95,156. When the perpetrator was a family member, friend, or neighbor, the average loss per victim was **\$145,768**.



# Financial Exploitation – Cost +

- Emotional cost, betrayal, depression.
- Permanent decline in standard of living.
- In one health study, victims of elder abuse, neglect, and financial exploitation were 3 times more likely to die at an earlier age than non-victims.

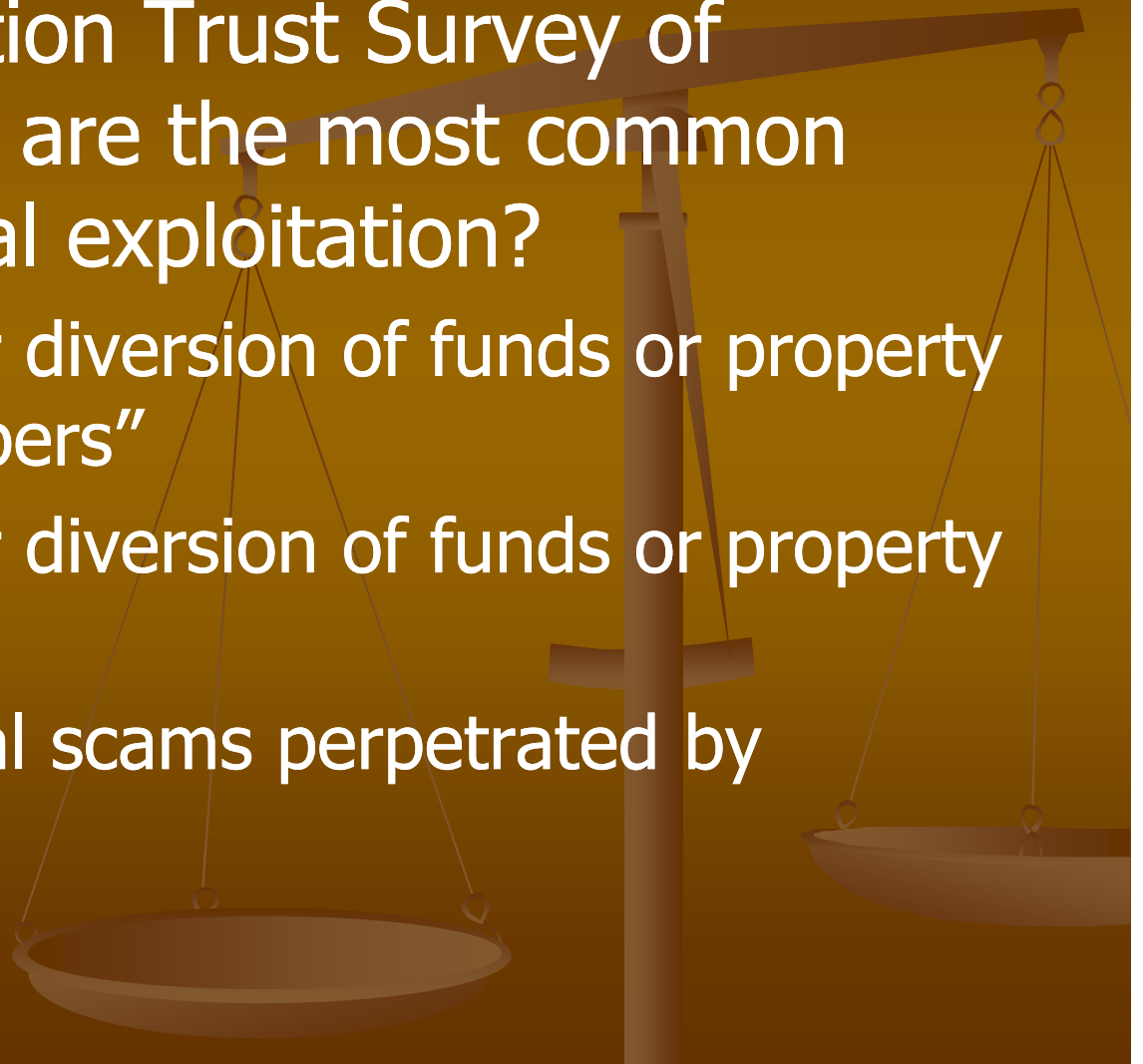


# Who are the victims?

- Women are more likely than men to be victims of elder financial exploitation.
  - In Alabama, women were the alleged victims in more than 63% of APS reports received.
- Most victims are between the ages of 80 and 89, live alone, and require some level of help with either health care or home maintenance.
  - In Alabama, 40% of APS investigations involved victims 75 years of age or older.

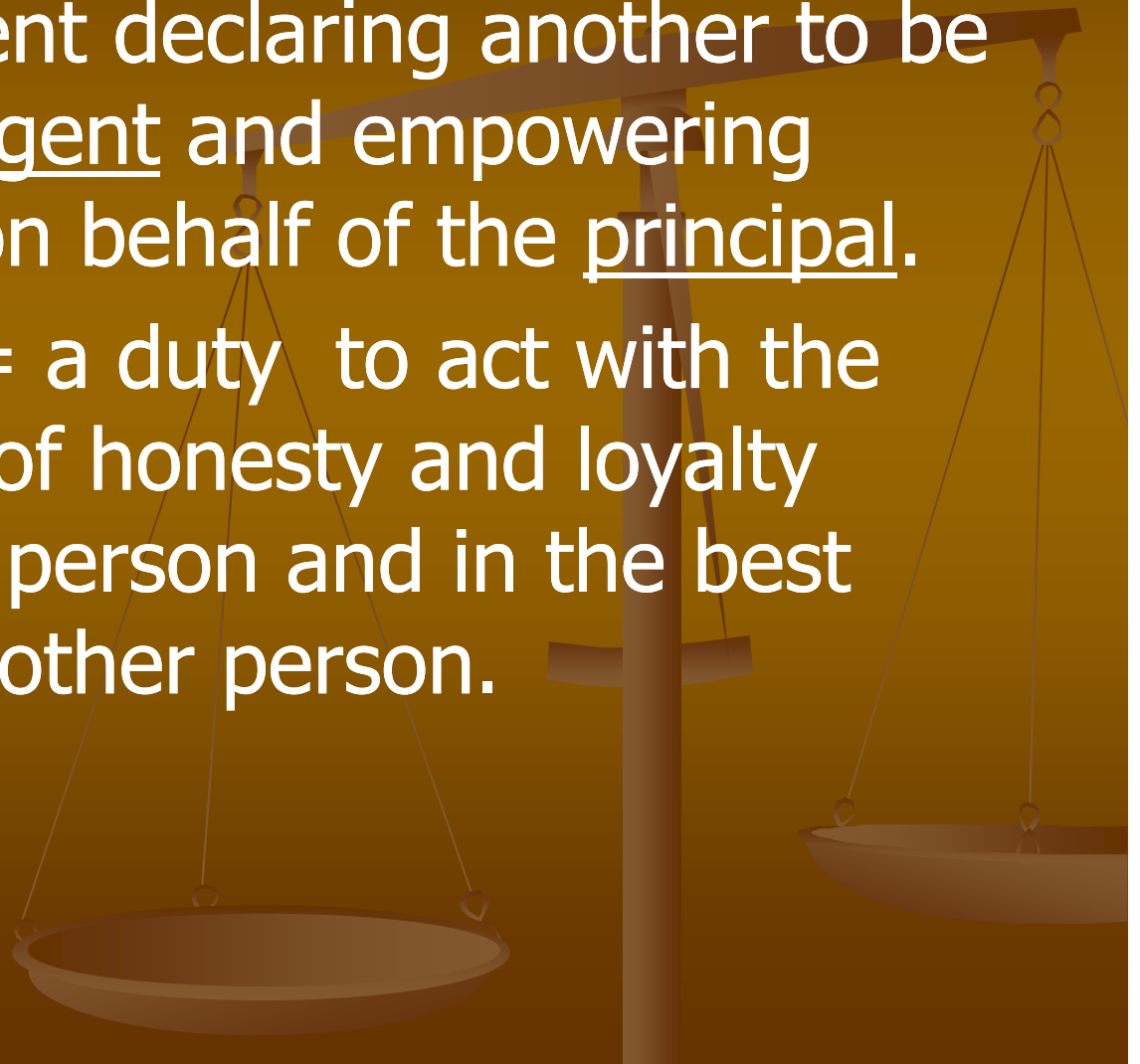
# Who are the perpetrators?

- Investor Protection Trust Survey of Experts -- What are the most common types of financial exploitation?
  - 79.4% "theft or diversion of funds or property by family members"
  - 49.4% "theft or diversion of funds or property by caregivers"
  - 46.5% "financial scams perpetrated by strangers"



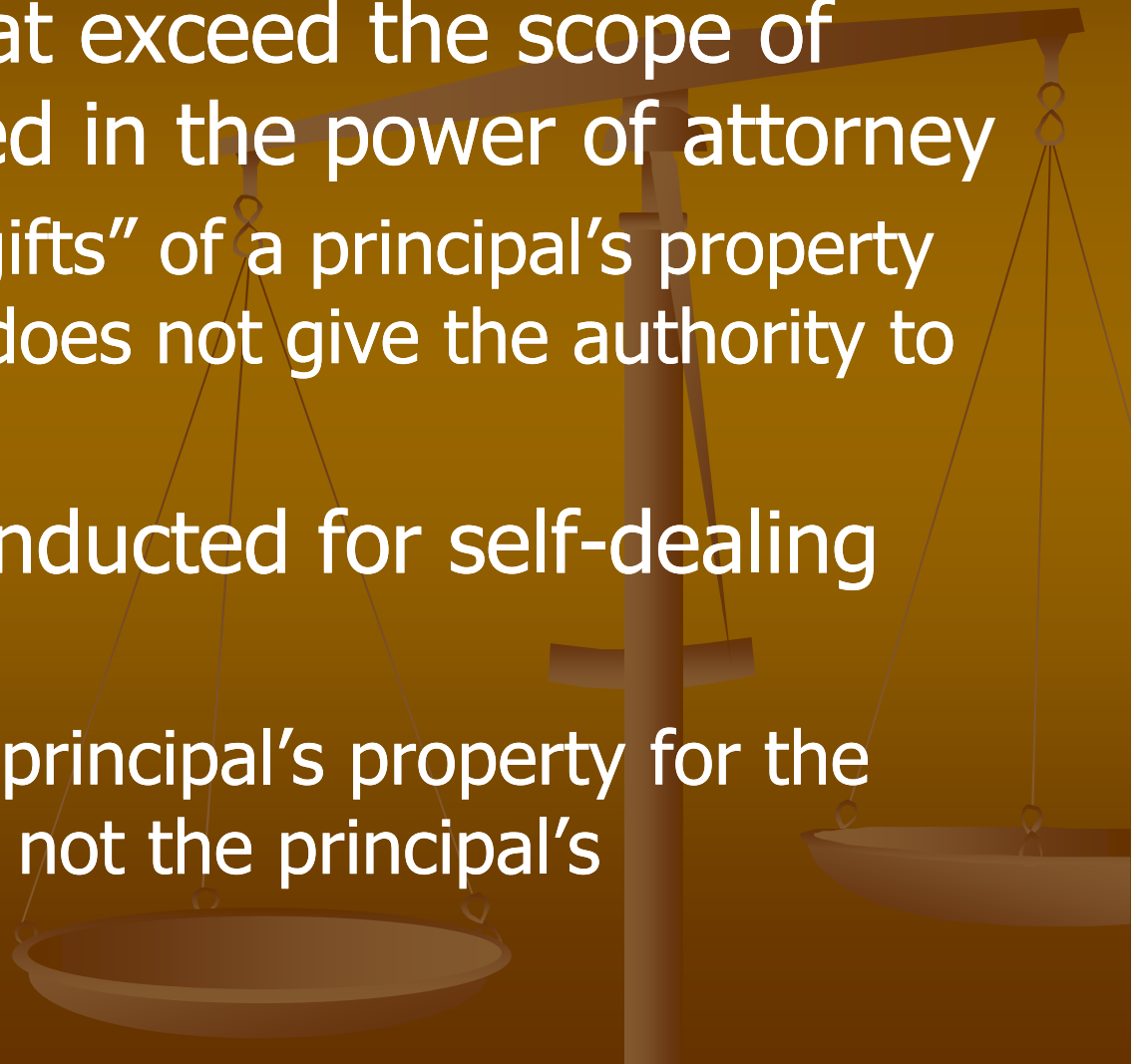
# Powers of Attorney

- A legal instrument declaring another to be the principal's agent and empowering another to act on behalf of the principal.
- Fiduciary duty = a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person.



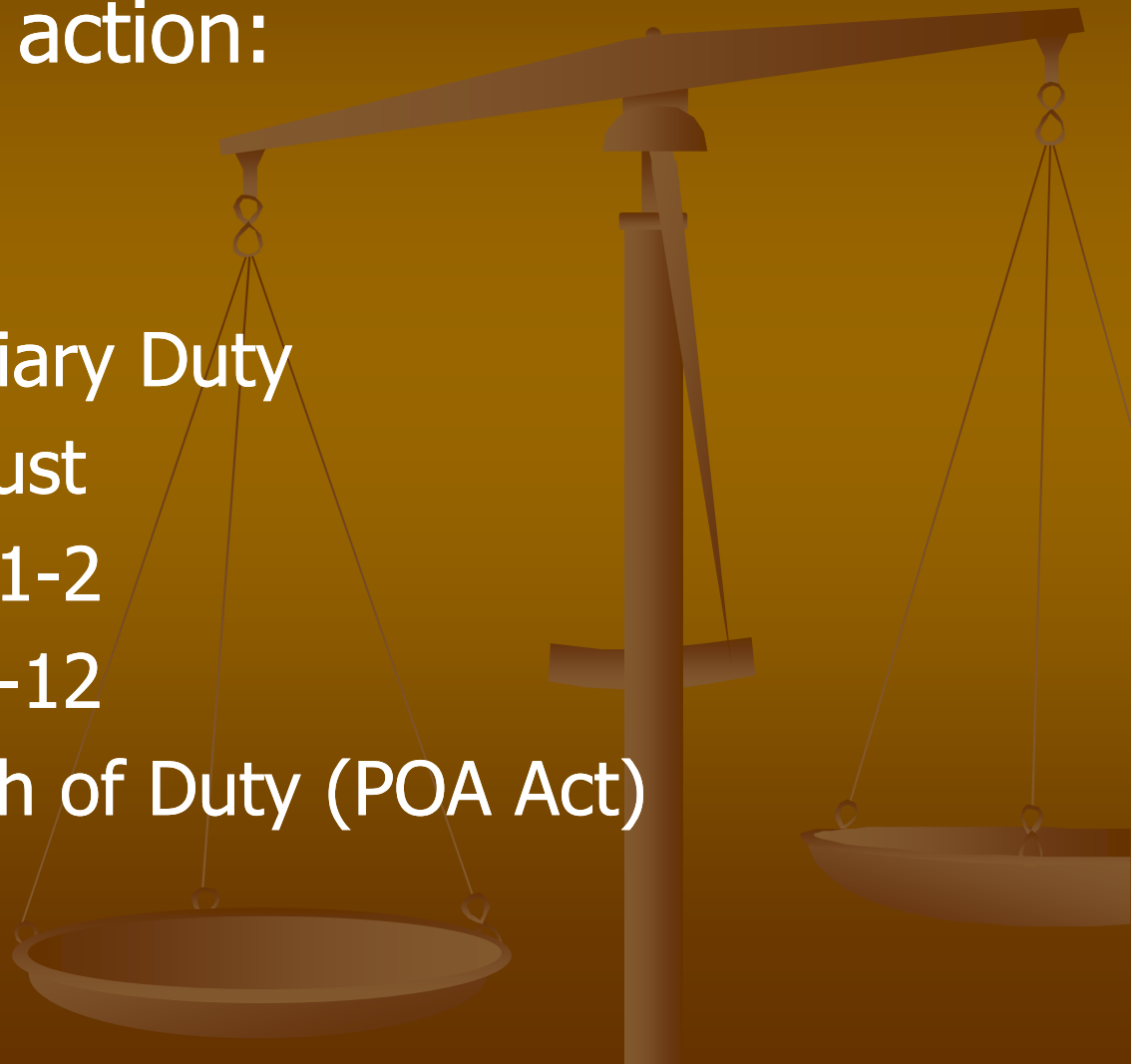
# Power of Attorney Abuse

- Transactions that exceed the scope of authority granted in the power of attorney
  - Agent makes “gifts” of a principal’s property when the POA does not give the authority to the agent
- Transactions conducted for self-dealing purposes
  - Agent uses the principal’s property for the agent’s benefit, not the principal’s



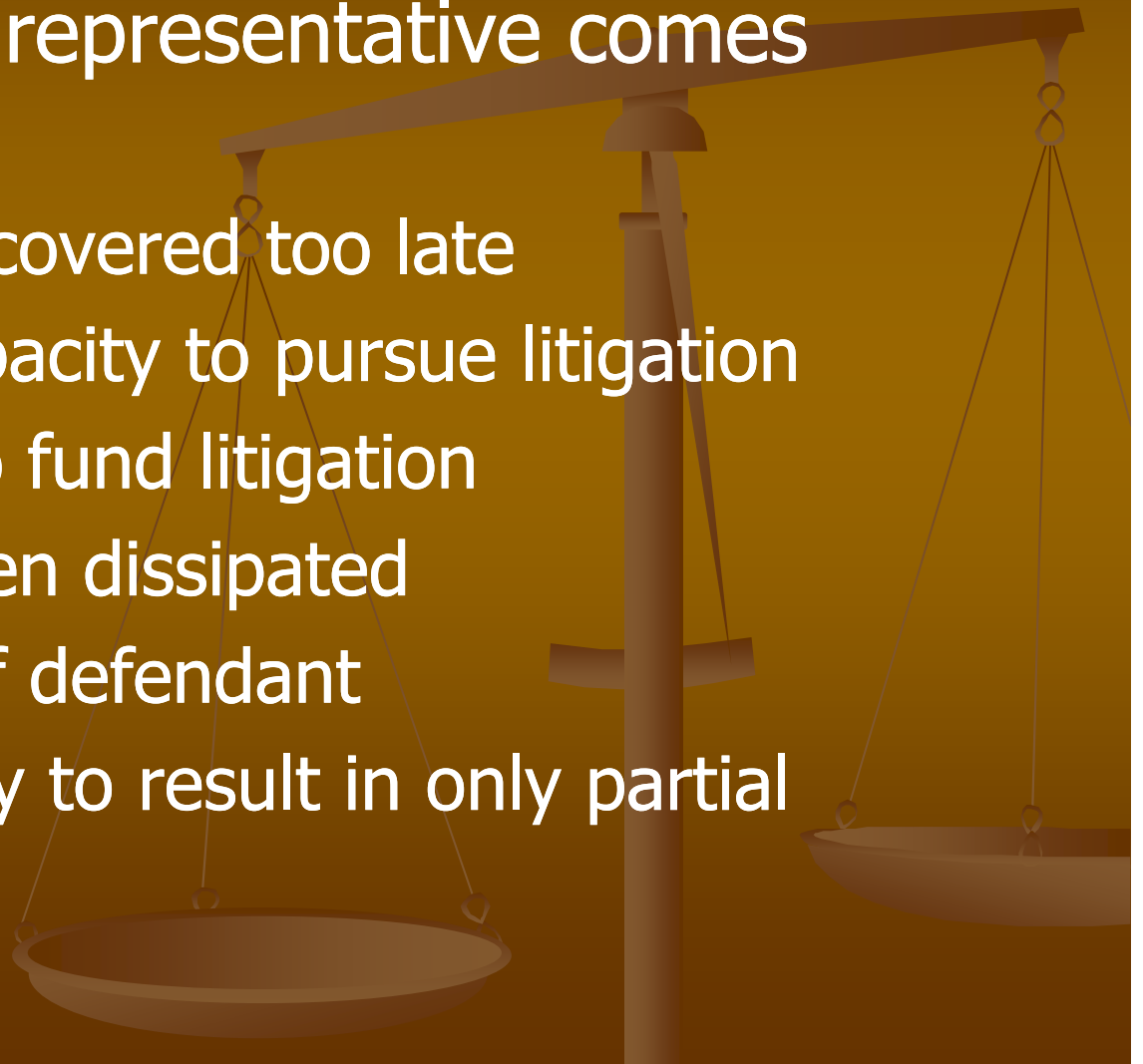
# Civil Remedies (aka “lawsuit”)

- Some causes of action:
  - Conversion
  - Fraud
  - Breach of Fiduciary Duty
  - Constructive Trust
  - Ala. Code § 35-1-2
  - Ala. Code § 8-9-12
  - Statutory Breach of Duty (POA Act)



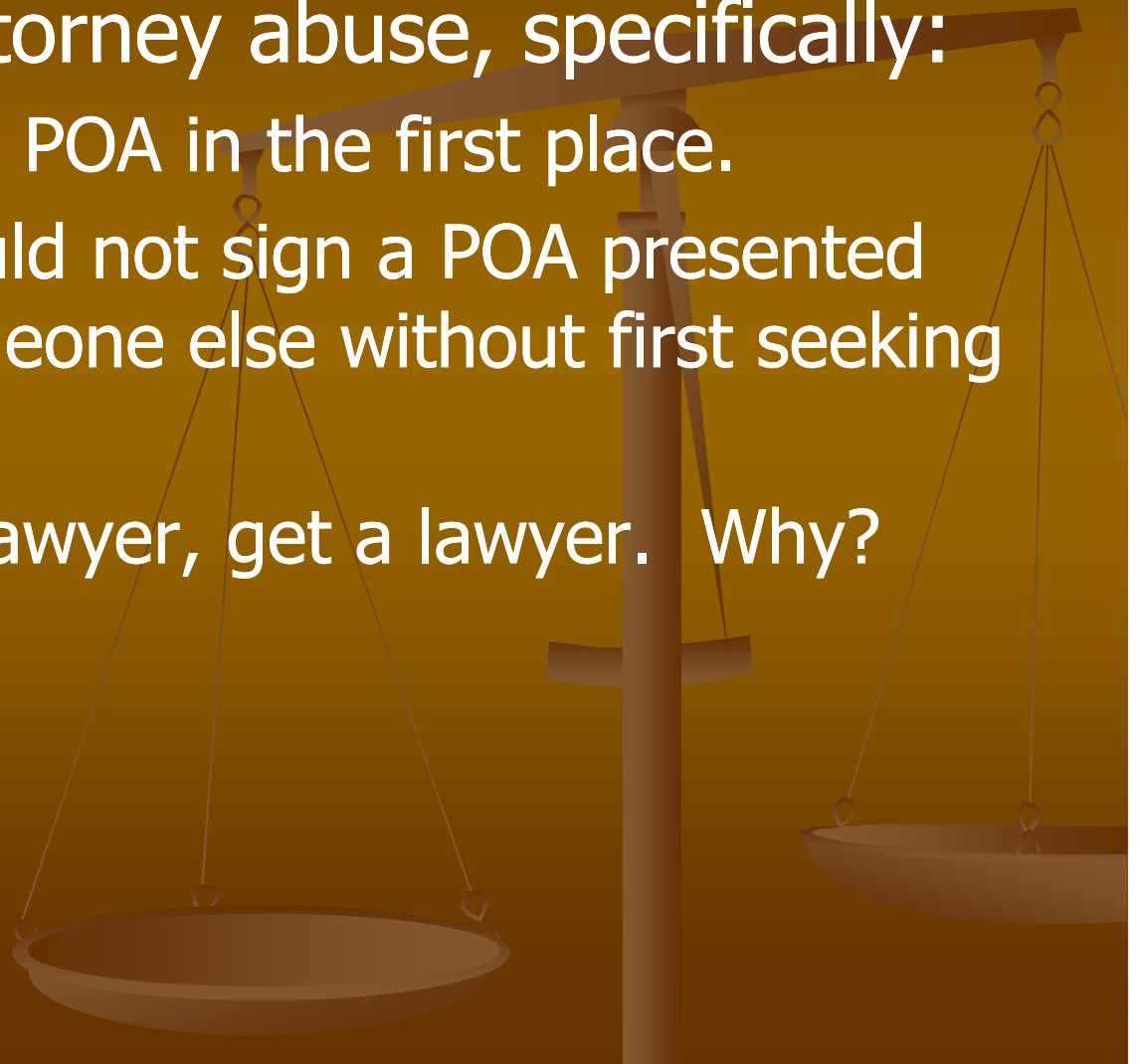
# Imperfection in the Civil System

- IF the victim or representative comes forward:
  - Exploitation discovered too late
  - Victim lacks capacity to pursue litigation
  - No resources to fund litigation
  - Assets have been dissipated
  - Judgment proof defendant
  - Restitution likely to result in only partial recovery

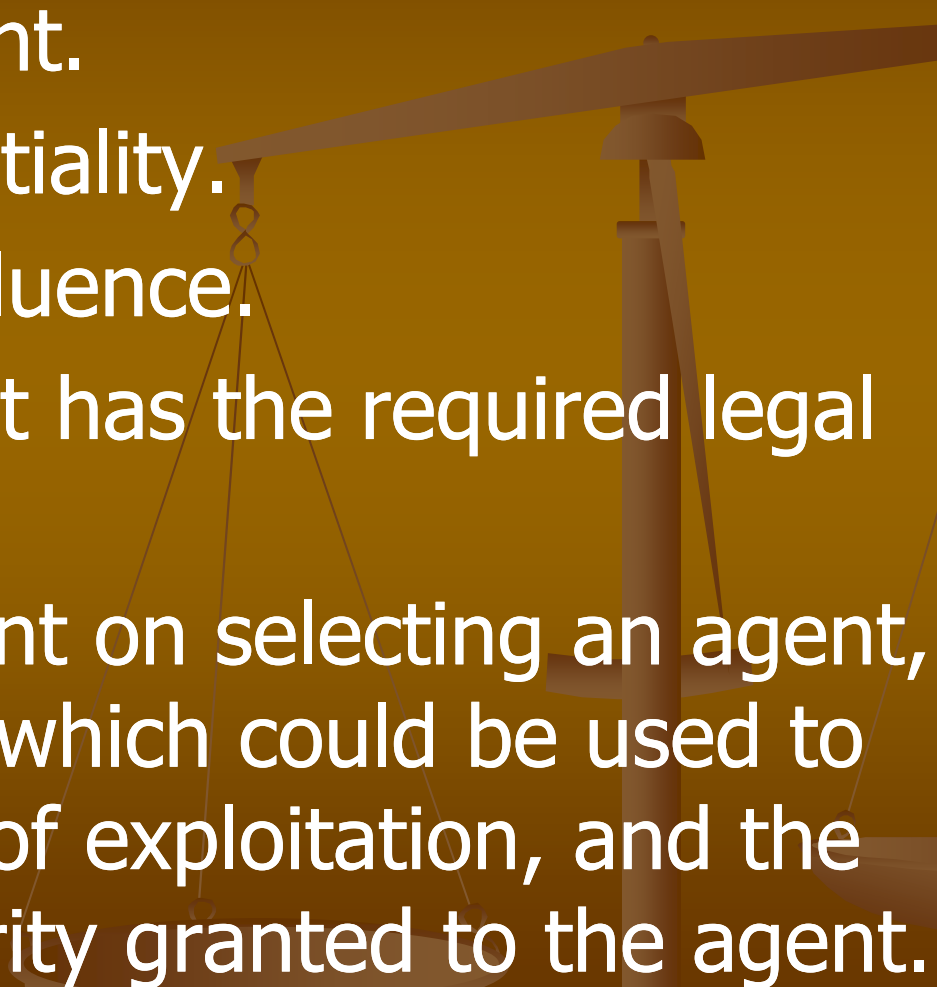


# Turning to Prevention

- For power of attorney abuse, specifically:
  - Don't execute a POA in the first place.
  - A principal should not sign a POA presented to them by someone else without first seeking legal advice.
  - Speaking as a lawyer, get a lawyer. Why?



# I'm a lawyer and I'm here to help

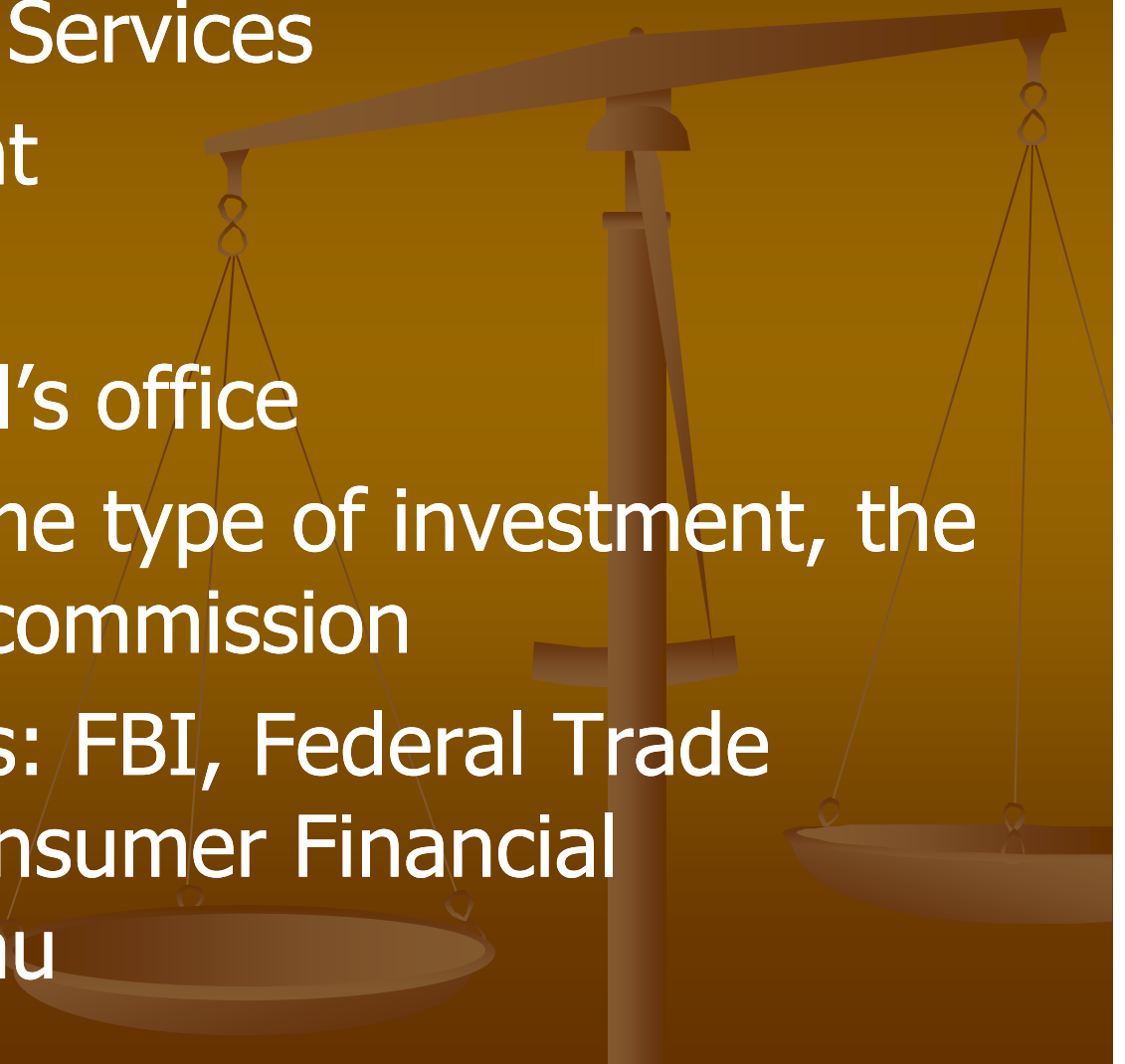
- Identify the client.
  - Ensure confidentiality.
  - Avoid undue influence.
  - Ensure the client has the required legal capacity.
  - Counsel the client on selecting an agent, various options which could be used to reduce the risk of exploitation, and the extent of authority granted to the agent.
- 

# Prevention – Recognizing It

- ❖ Lack of amenities victim could afford.
- ❖ Elder “voluntarily” giving uncharacteristically excessive financial reimbursement or gifts for needed care and companionship.
- ❖ Caregiver has control of elder’s money but is failing to provide for elder’s needs.
- ❖ Elder has signed property transfers (power of attorney, new will, etc.) but is unable to comprehend the transaction or what it means.

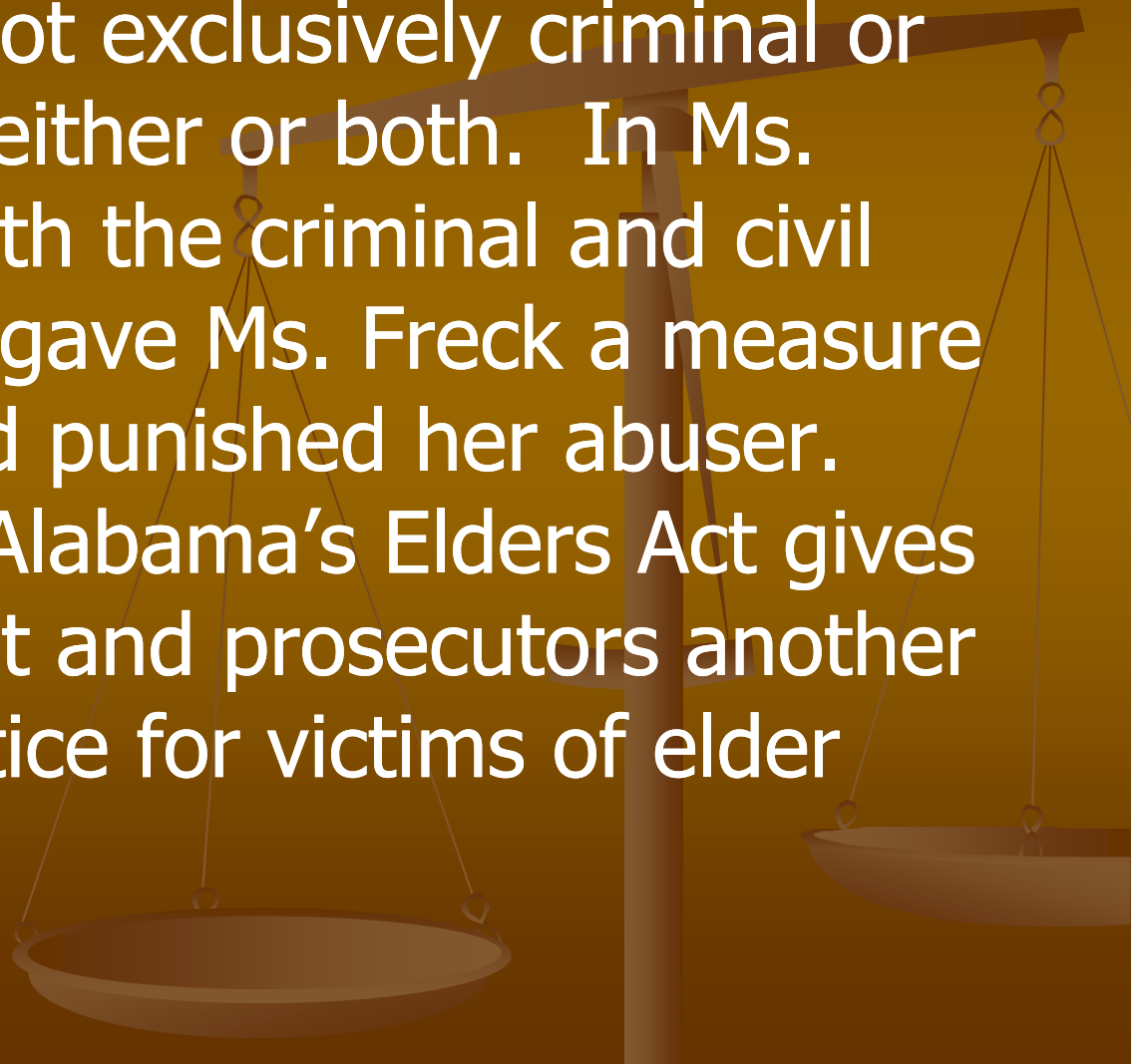
# Prevention – Reporting It

- Adult Protective Services
- Law enforcement
- District attorney
- Attorney general's office
- If it involves some type of investment, the state securities commission
- Federal agencies: FBI, Federal Trade Commission, Consumer Financial Protection Bureau

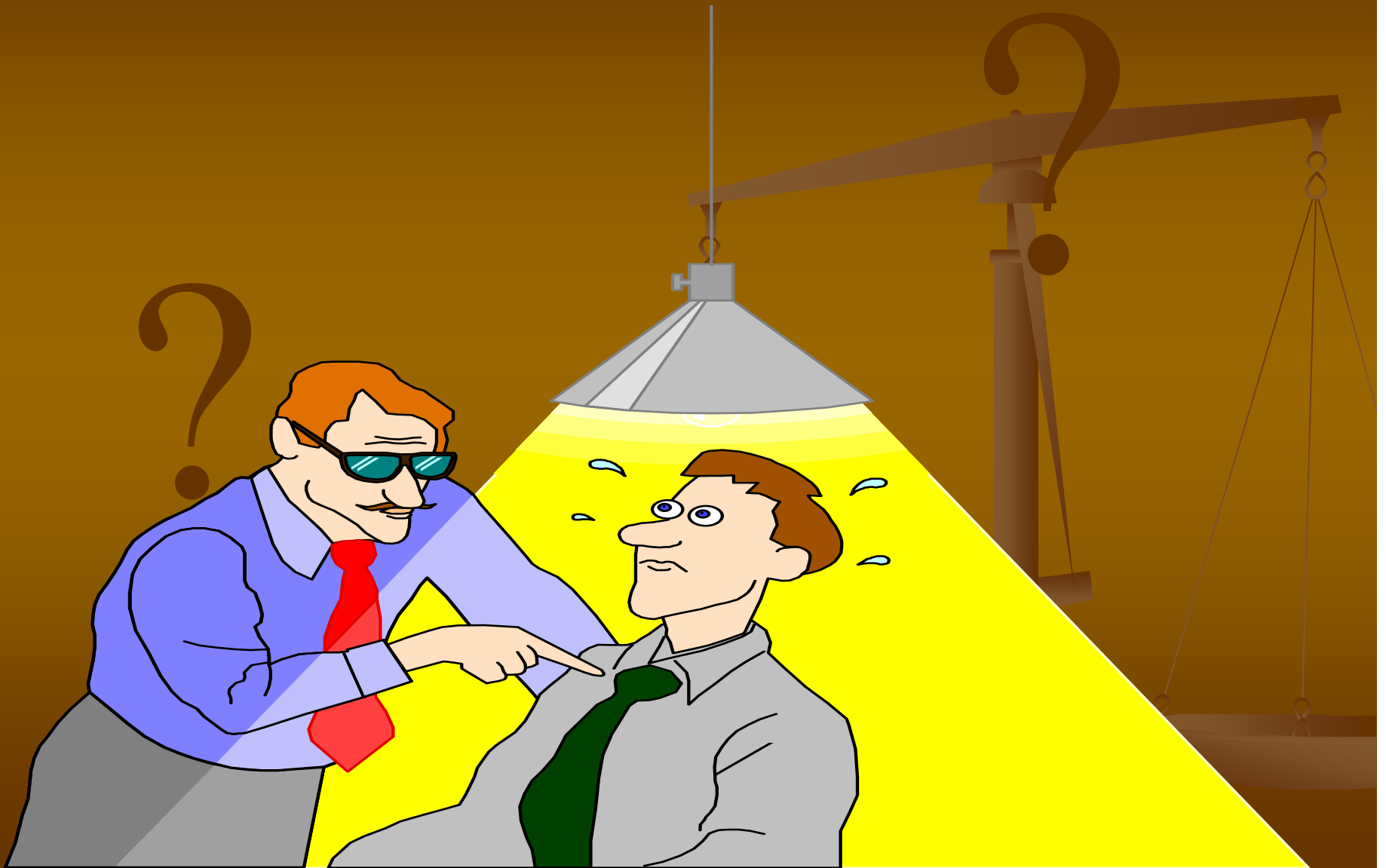


# (In)Justice

- Elder abuse is not exclusively criminal or civil. It can be either or both. In Ms. Freck's case, both the criminal and civil justice systems gave Ms. Freck a measure of a remedy and punished her abuser. The Protecting Alabama's Elders Act gives law enforcement and prosecutors another tool to seek justice for victims of elder abuse.



# QUESTIONS ?



# Contact Information

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